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## Summary

### Defamation and Sexual Reputation in Somerset, 1733-1850

Polly Morris

This dissertation examines sexual reputation in the county of Somerset between 1733 and 1850. Its purpose is to explore plebeian sexual culture by tracing changes in the way plebeian men and women defined and defended their sexual reputations in an era of social, economic and cultural transition. In this period Somerset evolved from a prosperous and rapidly growing county with an economy based on agriculture and manufactures to a more static and primarily agrarian county; its major city, Bath, went from being a thriving resort to a retirement town. At the same time, the breakdown of the Puritan sexual consensus left a hiatus before the triumph of Victorianism during which a multiplicity of sexual cultures thrived.

The defamation causes heard in the ecclesiastical courts of the diocese of Bath and Wells constitute the basic source for the study of plebeian sexual reputation. By the eighteenth century, these causes were concerned solely with sexual insults and the courts' clients were predominantly and increasingly married women drawn from the ranks of artisans and small tradespeople in the county's market towns and the city of Bath. The survival of this jurisdiction reflects a continuing need on the part of plebeian litigants for a cheap and public mode of settling disputes over honour. Though plebeian men continued to use the church courts to restore their good names long after upper class men had ceased to do so, their eventual abandonment of the courts has necessitated the use of common law sources to construct a picture of male reputation.

As the industrial and agricultural revolutions proceeded, and the personnel of the church courts adopted a sexual ideology emphasising privacy, decorum and the double standard, traditional plebeian sexual mores were challenged. Definitions of male and female reputation diverged and the egalitarianism of the early eighteenth century weakened. By the mid-nineteenth century, the dominant sexual culture had triumphed: the distinctive plebeian sexual culture had been absorbed by the more homogeneous sexual culture of the Victorian era; litigants had ceased to use the church courts; and, in 1854, the defamation jurisdiction was abolished.



DEFAMATION AND SEXUAL REPUTATION IN SOMERSET,  
1733-1850

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## CHAPTER 1

### INTRODUCTION

Few men and women among the ranks of the respectable poor and middling could have progressed from the cradle to the grave without being called upon to demonstrate that they had a good reputation. The junctures at which a good fame might be required were many, some related to the ordinary assumption of life's responsibilities--work, marriage--and others created by the exigencies of sudden or chronic disaster.

Private charity, which might provide the linen one was received in at birth, or a free education, or a small allowance in old age, was rarely dispensed without reference to an applicant's character. The Bath Society could claim of the aged poor to whom they allotted less than a shilling a week a piece that 'The characters of all are good, and well authenticated'. Officials of the Society visited as many of the more than two thousand adults they relieve each year as were resident locally to ascertain their means of support and were 'peculiarly attentive...as to the character of each applicant'. References were taken and scrupulously checked. Their small loans, up to £5, were extended to people of 'good

character', and travellers, who were relieved immediately, were turned away if they produced false papers or showed signs of drunkenness.<sup>1</sup>

The lack or loss of a good fame was enough to interrupt the step into marriage, to hurt business or to keep credit or charity beyond reach. As a personal and social attribute, one's reputation reflected on spouse and family as well as on employers, customers and clients. A damaged reputation could alter relations with all of these and with one's friends and neighbours as well. A good character was indispensable to employment, especially for workers who lived in or occupied positions of trust: a servant without a character was barred from decent work. Friendly societies and clothing clubs might stipulate that members be of good character, particularly if they were founded, as were the clubs in the Mendips, by outsiders such as Hannah More who were as intent on moral improvement as they were on material well-being.

Definitions of reputation varied with gender, marital status and class. For men, honesty, sobriety, trustworthiness and physical courage were of primary

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<sup>1</sup>Report of the Bath Society, No. 6 Pierrepont-Place, for the Investigation and Relief of Occasional Distress, Encouragement of Industry, and Suppression of Vagrants, Street-Beggars and Impostors.... (Bath: Richard Cruttwell, 1816), pp. 4-6; 10; 14. The Society did not lend child-bed linen for the first child after marriage, 'lest it should operate as a bounty on imprudence'... (p. 13).

importance; for women, all qualities were subordinate to sexual propriety, the major constituent of female reputation. As the double standard became more firmly entrenched among the lower classes, a trend we will examine in some detail below, most of the sexual attributes of male reputation disappeared and the need to litigate over insults to married women increased. The cuckold emerged as the most common male target of sexual insult and the charge of sodomy (another crime associated with passivity) as the most serious threat to a man's sexual reputation. Variations from class to class are most noticeable in the extent to which the double standard was accepted and in the methods chosen to defend damaged reputations.

Just as a good character meant different things to different people (applicants to the Bath Society gave employers as references; the Society preferred to relieve people who worked in 'respectable houses' and to lend money to those who could obtain security from 'respectable shopkeepers'), honour was traduced, policed and defended in a variety of ways.<sup>2</sup> Foremost among these, no doubt, was violence. No firm line can be drawn separating physical and verbal violence. A small number of litigants coupled defamation suits in the church courts with prosecutions for

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<sup>2</sup>Ibid., unnumbered page following p. 20. The sample interviews and visits included in the report confirm that visitors did ask for references, and checked them.

assault, and it was not uncommon for blows or threats of violence to be reported in depositions. It is also clear that much of the physical abuse that led to assault charges or the swearing of the peace was mixed with verbal insult. The number of simple assaults prosecuted annually at Quarter Sessions dwarfs the defamation business before the ecclesiastical courts and if one includes aggravated assaults and riots, assaults punished at Petty Sessions and the breaches of the peace that led to Articles of the Peace being sworn, one can only conclude that physical violence took precedence over verbal violence, though this choice, as we shall see, was predicated in part by jurisdictional developments and legal opportunities.<sup>3</sup>

Verbal abuse employed to damage reputation or to publicise an already listing fame took many forms, and offenders might be punished informally, locally or in one of several courts.<sup>4</sup> Defamation causes were within the

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<sup>3</sup>Henry Fielding, Amelia, 2 vols. (London, New York: J.M. Dent & Sons Ltd. and E.P. Dutton & Co., 1930), 2: 9n. Fielding believed that magistrates used the charge of riot to punish scolds who would have otherwise gone free: 'many thousands of old women have been arrested and put to expense, sometimes in prison, for a little intemperate use of their tongues'. Abusive words could not be punished by magistrates unless a charge of riot--an outrageous breach of the peace committed by more than three people--was added. The practise, Fielding claimed, was on the decline after 1749.

<sup>4</sup>Proscribed words, the invocation of which could lead to prosecution, were not necessarily libellous. Quarter Sessions records abound with indictments for sedition, particularly in the 1790s.



jurisdiction of the ecclesiastical courts, criminal libel causes were heard at Quarter Sessions and Assizes and civil suits were judged at King's Bench. Some borough and manorial courts entertained suits for slander and cucking stools, stocks, pillories and whipping posts were still in use in some Somerset parishes in the middle of the nineteenth century.<sup>5</sup> The Hutton stocks were repaired in

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<sup>5</sup>J.A. Sharpe, Defamation and Sexual Slander in Early Modern England: The Church Courts at York, Borthwick Papers, No. 58 (York: Borthwick Institute of Historical Research, University of York, n.d.), p. 5. How continuously these instruments were in use remains in question, for local court records in the eighteenth century often note the fact that they had fallen into disrepair: See Mr. and Mrs. D. James, Commander and Mrs. P.B. Lawder, Col. and Mrs. J.M. Lee, Mr. and Mrs. H. Smith, 'Manorial Court Papers, 1733-1757' in Wroughton Village Records. Studies of the History of a Somerset Village (Bristol: University of Bristol, 1969), p. 55 for Wroughton and Burrington tithing. Sudden interest in such devices may have had more to do with the desire to keep the lord of the manor up to scratch in fulfilling communal responsibilities than with a desire to use them: in Watchet in 1733 the Court Leet presented the lack of a cucking stool and pillory and ruled that the lord of the manor must pay to erect them: A.L. Wedlake, A History of Watchet, 2nd ed. (Dulverton: The Exmoor Press, 1973), pp. 74; 80. The VCH, 2: 285, notes of the Middle Ages that 'cases of alleged slander occupied much of the time of the [manor] courts', but unfortunately the delicacy of the antiquarians and local historians, many of them amateur, who have surveyed local court records often obscures the extent to which these courts regulated sexuality or sexual insult in a later era. The following additional sources, however, describe manorial or borough courts that continued to meet, most frequently in pubs, into the eighteenth or nineteenth centuries: James Savage, History of the Hundred of Carhampton (Bristol: William Strong, 1830), p. 210 (Cutcombe); Joshua Toulmin, The History of Taunton, in the County of Somerset, new ed. rev. and enl. by James Savage (Taunton, 1822), pp. 277-78; 560; Castle Cary and District, Somerset Folk Guides (London: Folk Press Limited, [1925]), p. 28.

1799 and again in 1823, and the Yeovil stocks were last used in 1846.<sup>6</sup> Fines were imposed by magistrates for swearing, and special levies could be introduced to encourage public decorum. Axbridge had an ordinance against defamation, enforced by its own court, that dated back to the sixteenth century; and, from 1755, Bath chairmen were liable to a 10s. fine for swearing at their passengers.<sup>7</sup>

Verbal abuse, whether scolding, gossip or defamation, was popularly viewed as a female activity. Those cucking stools were reportedly kept in repair for 'ducking disorderly and scolding women'; and in a chapbook of 1700 a pretended Quaker of Chard tries to raise the devil to grant him three wishes, one of which is 'power over all women's tongues'.<sup>8</sup> Although the common scolds prosecuted at local Quarter Sessions in the early part of the eighteenth century were invariably women, the sexual insults that

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<sup>6</sup>For Hutton, see Francis A. Knight, The Sea-Board of Mendip (London: J.M. Dent & Co., 1902), p. 374; for Yeovil, see W.G. Willis Watson, A Chronological History of Somerset, Somerset Folk series, nos. 21-22 (London: Folk Press Limited, 1925), p. 201. The Shepton Mallet stocks, on the other hand, were removed in the nineteenth century: John E. Farbrother, Shepton Mallet: Notes on its History, Ancient, Descriptive, and Natural (Shepton Mallet and London, 1860), p. 152.

<sup>7</sup>Francis A. Knight, Heart of Mendip (London: J.M. Dent & Sons Ltd., 1915), p. 411; John Haddon, Bath (London: B.T. Batsford Ltd., 1973), p. 111.

<sup>8</sup>Toulmin, Taunton, p. 560; Emanuel Green, 'On Some Somerset Chap-Books', Somerset Archaeology and Natural History 24 (1878): 59.

brought complainants to the church courts of Somerset in the Georgian era and until the jurisdiction was abolished were primarily slurs on the chastity of married women and they were invoked, more often than not, by men.<sup>9</sup> Moreover, defamation depositions suggest that women were not alone in choosing collective work and social occasions to share their news.

Our major concern in the following pages is with female reputation, the ways in which it could be undermined and retrieved, and the effects that a damaged fame had on the women who lived and worked in Somerset between 1733, when ecclesiastical courts adopted the vernacular, and 1850. Because female reputation was defined largely in terms of sexual conduct, the sexual insult, the allegation of whoredom, was the most effective means of traducing a woman's character. There were a wide range of responses open to a woman who was called a whore--the word could be ignored in many situations, or answered with a similar insult, or instantaneously avenged with a slap or a punch--but we will focus on the litigation over words that, for reasons of jurisdiction, drew cases of female defamation into the church courts. Where once the church courts had

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<sup>9</sup>Punishment of common scolds at Bristol, where women were also taken before the mayor, ceased around the time it did in Somerset: John Latimer, The Annals of Bristol in the Eighteenth Century (Printed for the Author, 1893), pp. 27; 132.

been used by men and women of all classes to settle disputes over reputation, the courts had become, by the eighteenth century, a venue used almost exclusively by plebeian women to defend their sexual reputations. Therefore, we will consider these defamation causes and their significance in the context of the plebeian sexual culture of the period.

Though sexual insult was not the only verbal abuse used to tarnish women's reputations, its effectiveness often led to the combination of sexual accusations with non-sexual ones and the employment of the epithet 'whore' in relation to transgressions that were in no way sexual. Witchcraft, of course, was not without its sexual connotations and the accusation had often been coupled with the word 'whore' in the past; but as interest in witchcraft and witches died down in the early eighteenth century, this serious threat to female reputation subsided.<sup>10</sup> Allegations

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<sup>10</sup>Peter Rushton, 'Women, Witchcraft, and Slander in Early Modern England: Cases from the Church Courts of Durham, 1560-1675', Northern History 18 (1982): 129. And, as with sexual insult in this earlier period, victims might be men or women. Though Rushton has identified only one male plaintiff in his church court sample, accusations against men were far more common in the secular courts than accusations against women. His findings also suggest that allegations of witchcraft were used in much the same way that sexual insults could be used in our period, to discredit legal opponents in unrelated suits and in countersuits to encourage arbitration: pp. 124; 128-30. There are no instances of defamation involving witchcraft in the church court records I have looked at, but witches, cunning persons and healers turn up in local histories and Notes and Queries for Somerset and Dorset: see, for instance, 4 (1895): 157-58; 16 (1920): 104. An old woman

of thievery, dishonesty and drunkenness work their way into defamation libels when they are combined with sexual insults. Yet more striking is the way in which such accusations found expression in sexual terms: the most common charge against women recorded in the church courts was that of committing adultery, a crime against male property in women's sexuality; and drunkenness was closely linked with sexual debauchery. Some women accused of theft may be found taking an interest in non-sexual aspects of their reputations that culminated in legal action outside the church courts, but such cases are rare. Ann Escott, the wife of a King's Brompton blacksmith, was approached by a woman who offered to 'give her a few words in the Line of Life'. Escott resisted until the woman revealed that she 'had been scandalled and ill-used with regard to the Loss of some money but that she was innocent of it' and offered to name her accuser.<sup>11</sup>

The significance of this thesis for the study of plebeian sexual culture is threefold. First, it

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suspected of witchcraft was reportedly drowned before a large crowd of her Frome neighbours in 1730 on the advice of a cunning man who urged the ordeal by water: Latimer, Annals, p. 28 and Watson, Chronological History, p. 156. Latimer also describes the activities of a cunning woman at Bedminster in the 1760s (p. 350) and the exorcism of a Yatton tailor by a Bristol rector and six Wesleyan preachers in 1788 (pp. 483-84).

<sup>11</sup>Q/SR 374 (Taunton, 1806). Information of Ann Escott. See also Rushton, 'Women, Witchcraft and Slander', p. 120.

systematically exploits a source for the study of sexuality in the eighteenth and early nineteenth centuries long overlooked by historians, the defamation causes heard in local ecclesiastical courts. Secondly, it provides insight into the nature of plebeian sexual culture and the ways in which it differed from and interacted with the dominant sexual culture in a period when Britain was developing as a class society. As Jeffrey Weeks has argued in Sex, Politics and Society, class formation had a sexual dimension: in the years under consideration class identities were crystallizing around the issue of sexuality and sexual behaviour was being incorporated into the definition of class boundaries.<sup>12</sup> By locating this study in the era of the industrial and agricultural revolutions, as well as in the interval between Puritanism and Victorianism, we are better able to see the points of conflict between the polite and popular cultures and to trace the gradual rapprochement that led to the more homogeneous sexual culture of the later nineteenth century. Finally, defamation litigation illuminates a fundamental aspect of any sexual culture, relations between men and women. Here again, the social and economic dislocations of the period are important, for while gender roles were

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<sup>12</sup>Jeffrey Weeks, Sex, Politics and Society; The Regulation of Sexuality since 1800 (London and New York: Longman, 1981), espec. Chapters 2 and 4.

altering in response to new material conditions, they were simultaneously responding to ideological changes of an opposite tendency that originated with the upper classes. Definitions of masculinity and femininity and of gender relations that ignored the realities of plebeian existence created new tensions between plebeian men and women that could find expression in wifebeating, assault or defamation. If, as Miranda Chaytor has argued, defamation litigation in earlier centuries is a good guide to the separate spheres of men and women in a society of ranks, it tells us more, in the eighteenth and nineteenth centuries, of the conflict between men and women in a class society.<sup>13</sup>

While the role of the church courts in regulating sexual behaviour has received some serious attention of late, and the depositions filed in ecclesiastical causes have been recognised as rich sources for plebeian sexual attitudes and practises, most of these studies have focussed on earlier periods.<sup>14</sup> Therefore, one of the tasks undertaken in this thesis is an examination of the continuing activity of the church courts in the diocese of

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<sup>13</sup>Miranda Chaytor, 'Household and Kinship: Ryton in the late 16th and early 17th centuries', History Workshop 10 (Autumn 1980): 26.

<sup>14</sup>Notable contributions are Sharpe, Defamation and Sexual Slander; Chaytor, 'Household and Kinship'; and M.J. Ingram, 'Ecclesiastical Justice in Wiltshire 1600-1640, With special reference to cases concerning sex and marriage' (D. Phil. dissertation, Oxford, 1976), especially Chapter 9, 'Defamation Causes'.

Bath and Wells. These courts entertained defamation causes, with some important alterations in procedure and practise, until the jurisdiction was abolished in 1854.

As with any study based on legal records, it is necessary to understand the limitations imposed on the material by jurisdiction and procedure; by the accessibility of the courts and the cost of litigation. We must also recognise that court practise was not entirely determined at Wells, for litigants had their own ideas about what constituted defamatory language and about how defamation causes might be incorporated into larger legal strategies. There are dangers, too, in taking either an overly literal or strategic view of defamation actions. Without an understanding of the way the courts operated or of the uses litigants made of them, it is all too easy to do so. G.R. Quaife, who uses defamation material illustratively in Wanton Wenches and Wayward Wives, his study of seventeenth-century peasant sexuality in Somerset, is too quick to assume that women who were called whores were whores, but that the slanders directed at men were no more than false accusations invoked as a means of seeking revenge through litigation.<sup>15</sup>

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<sup>15</sup>G.R. Quaife, Wanton Wenches and Wayward Wives; Peasants and Illicit Sex in Early Seventeenth Century England (London: Croom Helm, 1979), pp. 72; 142.



Finally, court practise did not remain unchanged in our period. The monopolisation of the defamation jurisdiction by plebeian clients in the eighteenth century, and their exploitation of an official legal institution to achieve their own ends in their own way, was challenged by court personnel who had come to object to the sexual content and indecorous procedures of defamation litigation. The church courts may usefully be viewed as an arena in which the participants in two distinct sexual cultures met and fought a protracted battle over the definition and defence of sexual honour. If the continued vitality of popular notions of reputation and its defence account for the lengthy survival of the courts, the ultimate victory lay with the official sexual culture from which the double standard and ideals of propriety, respectability and decorum spread. Defamation litigation exposes some of the points of popular resistance to the dominant ideology, but the inexorable decline in the volume of business at Wells suggests that plebeian men and women were voluntarily cutting themselves off from popular sexual culture. The dismantling of the ecclesiastical courts' jurisdiction over matters of sex, marriage and honour marked an important step in the consolidation of the Victorian sexual consensus and came as no surprise to either court personnel or litigants.

Though the historical literature on plebeian sexuality in the eighteenth and nineteenth centuries grows rapidly, the subject of sexual reputation has been approached at best tangentially, in part because of ignorance of the sources and more importantly because of the way lower class sexuality has been perceived by historians. The attitude, expressed most prominently by Lawrence Stone, that plebeian sexuality in its lower reaches was a chaotic and brutal affair that did not admit of subtle concepts like personal honour has been a major bar to the study of plebeian sexual reputation. If Stone does an admirable job of showing us upper class sexual and familial behaviour from the inside in The Family, Sex and Marriage, his approach to the plebs, as he admits, is woefully external. He distinguishes far too little between plebeian sexual attitudes and practises as refracted through the agendas of those who wished to control plebeian sexuality and the actual attitudes and behaviour of men and women who did not keep journals or write letters.<sup>16</sup> Unlike eighteenth-century novelists, who devoted much energy to illustrating such concepts as 'honour among thieves'-- witness Smollett's fascination with the operation of honour among society's outcasts--contemporary historians have all

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<sup>16</sup>Lawrence Stone, The Family, Sex and Marriage In England 1500-1800 (New York: Harper & Row, Publishers, 1977), Part Five, 'Sex', especially Chapter 12, 'Plebeian Sexual Behaviour'.

too frequently covered their ignorance of plebeian culture with condescending conjecture.<sup>17</sup> Others, guided by the availability of evidence, have focussed on the criminal and illicit dimensions of plebeian sexuality, such as bastardy. While these aberrations arguably illuminate broader aspects of plebeian sexuality, they are viewed within the historical context of the dominant sexual culture if they are viewed within any historical context at all.

Quaife, to whom we are indebted for our picture of seventeenth-century sexuality, is not immune to these failings. For Quaife, the peasant world of Somerset is 'amoral' because its approach to sexuality, and particularly to chastity, marriage and fidelity, differed from that of the official sexual culture as it was expressed in the law of Church and State.<sup>18</sup> (Weeks argues more convincingly that these men and women were governed by a 'social morality' and that there was no link between 'sexual activity per se and social morality'.)<sup>19</sup> Quaife's use of legal documents leads him to lay extraordinary

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<sup>17</sup>Tobias Smollett, The Adventures of Roderick Random, The World's Classics (Oxford: Oxford University Press, 1981), pp. 89-90; 129; 133. Smollett's characters are quick to threaten defamation suits, too: pp. 90; 317.

<sup>18</sup>Quaife, Wanton Wenches, pp. 179-80. See also the work of J. Michael Phayer: 'Lower-Class Morality: The Case of Bavaria', Journal of Social History 8 (1974-5):79-95, and Sexual Liberation and Religion in Nineteenth Century Europe (London: Croom Helm, 1977).

<sup>19</sup>Weeks, Sex, Politics and Society, pp. 22-23.

stress on female misbehaviour (women were prosecuted and punished far more frequently for such sexual crimes as bastardy) and to disregard the significance or extent of certain male activities, such as rape. In trying to make a case for the materialism of peasant society, its hardheadedness and calculation in personal and sexual relations, Quaife overlooks, at least until his conclusion, his own evidence of the richness of plebeian emotional life and the additional motives--love, fear of damnation, concern with reputation--that governed plebeian sexual behaviour.<sup>20</sup>

Nonetheless, Quaife provides a benchmark against which we may measure the changes of the following centuries. The enormous volume of legal material pertaining to sexuality available to the seventeenth-century historian reveals a profound difference between that century and the eighteenth. In Quaife's Somerset (and this is an early seventeenth-century Somerset) ecclesiastical officials took an extensive interest in the sexual sins of their flocks: Visitation Articles abound with inquiries into illicit sexuality and the courts readily punished offenders. Magistrates, too, were willing to invoke a range of summary punishments against sexual offenders, or even those rumoured to have offended, as a means of keeping

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<sup>20</sup>Quaife, Wanton Wenches, pp. 179-82 and his treatment of consent in Chapter 3.

the peace. The anxiety over the potential disruption caused by sexual misbehaviour led secular and ecclesiastical authorities to battle over jurisdiction and methods of control.<sup>21</sup>

If, as Lawrence Stone contends, the aristocracy and squirarchy celebrated the collapse of Puritanism with a release of libido in the late seventeenth century, they also took an important step toward asserting the separation of the ranks of society and toward advancing the decline of obligation and duty in cementing the social hierarchy by refusing, in their official capacities (as magistrates, members of parliament and clergymen) to police sexual behaviour.<sup>22</sup> The unwillingness of the upper classes to inquire too deeply into the sexual activities of the plebs grew throughout the eighteenth century. The new valuation of privacy, propriety and decorum made the graphic reportage of the church courts distasteful to court personnel and led to a rapid decline in the few surviving ecclesiastical institutions charged with punishing sexual

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<sup>21</sup>Ibid., pp. 39; 41; 197-98; 220. Eighteenth-century Visitation Articles for the county inquire only if any persons in the parish are under a common fame of adultery, fornication or incest; whether any married couples were not cohabiting; and whether any had married within the prohibited degrees. A form from the 1840s avoids questions of sexual behaviour entirely: D/D/Pd box 2 (these articles may have been used only in the peculiar jurisdictions, where sexuality could be more carefully supervised by ecclesiastical authorities).

<sup>22</sup>Stone, Family, Sex and Marriage, pp. 633-34.

misbehaviour. Propriety served to shield the rich from the intimacies of the poor, and where it did not, as in a defamation cause, which required judges and proctors to listen to repetitions of the sexual slander and to stand by as defamatory words were repeated before the victim in a form of penance, those exposed could be quick to express their disapproval. The control of the sexuality of the poor became instead the responsibility of an increasingly professional group whose concern was with the economic consequences of the breeding of the poor, whether licit or illicit, and later with disease and prostitution.<sup>23</sup> Once sexual behaviour had become a symbol of 'wider social features', class boundaries could be solidified by enforcing different standards of sexual behaviour for the plebs and particularly for the plebeian woman.<sup>24</sup> Thus the bastardy clauses of the New Poor Law, which dispensed with the unpleasant inquiry into the paternity of the child, shifted the entire burden of punishment onto the mother and left her without means of support or legal redress against the father. Here the double standard, of gender and class, reached its apogee.

Dating changes in sexual behaviour and attitudes

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<sup>23</sup>For the later period see Judith R. Walkowitz, Prostitution and Victorian Society; Women, Class and the State (Cambridge: Cambridge University Press, 1980).

<sup>24</sup>Weeks, Sex, Politics and Society, pp. 92-93.

toward sexuality is one of Lawrence Stone's great preoccupations in The Family, Sex and Marriage and even he, in the end, is reduced to characterising the long eighteenth century in contradictory ways. Sexual practises and perceptions were undoubtedly shaped by where one found oneself in society, whether male or female, rich or poor, young or old; in the absence of consensus a multiplicity of sexual subcultures thrived. Therefore, the broad outlines Stone proposes for the period 1670 to 1810--nearly universal sexual licence and the adoption of a sexual ideology to match, qualified as early as 1770 by a return to repression heralded by the growth of Methodism and Evangelicalism--must be further refined along class and gender lines.<sup>25</sup>

Defamation litigation is useful in differentiating plebeian sexual culture from the dominant sexual culture that Stone describes. Defamatory words continued to have a disruptive effect into the nineteenth century, though their sphere of operation was increasingly limited by class and gender. Delivered under the proper conditions, sexual slander resulted in personal shame, conjugal discomfort and material loss. This suggests that sexual reputation continued to matter to those who used the church courts to

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<sup>25</sup>Stone, Family, Sex and Marriage, pp. 545; 648. For a critique that focusses on gender see Lois G. Schwoerer, 'Seventeenth-Century English Women Engraved in Stone?', Albion 16 (Winter 1984): 389-403.

settle their disputes over honour, the working poor and the small artisans and tradespeople of Somerset. It also suggests that public verbal abuse was a common part of their culture and was widely recognised as damaging to one's reputation. Little is known about the sexual honour of the very poor, but they certainly conducted their lives with less reference to the ideals of propriety and respectability imposed on those dependent on the organised charity, employment or custom of the upper classes. Upper class men had long ceased to litigate in the church courts, and by the eighteenth century their wives, whose class position bound them more closely to the home and whose social world no longer indulged verbal licence, had dropped from the courts' rosters. Sexual reputation remained extremely important to these women--they were, if anything, more subject to the double standard than women of the lower orders--but their honour was damaged and defended in different ways.<sup>26</sup> The church courts no longer played any role in resolving their affairs of honour.

The predominantly plebeian character of defamation

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<sup>26</sup>See, for instance, Dr. Johnson's famous dictum which concludes that any woman who deviates from chastity "has given up every notion of female honour and virtue, which are all included in chastity". Quoted in Norah Smith, 'Sexual mores and attitudes in Enlightenment Scotland' in Sexuality in Eighteenth-Century Britain, ed. Paul-Gabriel Boucé (Manchester: Manchester University Press and Totowa, New Jersey: Barnes & Noble Books, 1982), p. 64.



litigation was widely recognised by contemporaries. Court personnel referred to it in the course of parliamentary inquiries, and it is likely that the proctors and registrars of Somerset offered a rapid, efficient and reasonably inexpensive service only as long as they were willing to cater for defamation clients of the lower orders. Knowledge of the courts, which were in practise located in one corner of the county, was widespread enough to insure a flow of litigants from all over the eastern half of Somerset into the nineteenth century. The promptings of a plebeian sexual culture with its own concepts of reputation and honour--concepts which predated the late eighteenth-century reformation of manners posited by Stone--was partly responsible for the class profile of litigants in this period, but the pressure exerted by employers, customers and clients of a higher status is also visible. Men who would not have thought of taking their wives or daughters to Wells to clear their names were instrumental in dispatching their lower class female dependents, servants and employees, to court when they were slandered. The working poor and the artisans, shopkeepers and tradespeople of Somerset were not immune to upper class notions of respectability and their continued use, as well as their eventual abandonment, of the church courts owes something to the codes of the polite culture in which they also participated.

That defamation litigation in the church courts led, in this era, to the confrontation of two cultures with different sexual and social values was not lost on contemporaries or on such late Victorian commentators as John Latimer, who introduces the defamation anecdotes in The Annals of Bristol in the Eighteenth Century with the remark that 'the ducking stool for the punishment of scolds having gone out of fashion, a victim of female malice bethought herself about this time of another ancient piece of machinery--now equally obsolete--for castigating the evil-tongued'.<sup>27</sup> Neither the sexual culture of the plebeian litigants nor the procedures and practises of the church courts remained unchanged during these centuries of intimate contact, and if the courts emerged in the middle of the nineteenth century shorn of their defamation jurisdiction, their clients had come to redefine reputation in ways that took into account the versions of the double standard, respectability and decorum that they had found at Wells. Divisions between men and women continued to run deep, but the way they were expressed and mediated altered with the disappearance of the church courts.

Essential to the understanding of any sexual culture is an understanding of gender relations. Defamatory words have always shed light on the boundaries

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<sup>27</sup>Latimer, Annals, pp. 359-61.

of acceptable sexual behaviour, just as the defamatory circumstances which led to litigation--the nature of the location and witnesses, the relationship between defamer and defamed--indicate the limits of acceptable social behaviour. The language of defamation, the word 'whore' and the speeches, long and short, recorded in libels and depositions, demonstrates the centrality of sexuality to the determination of female reputation and the power of the words of men, and to a lesser extent of women, to injure female reputation. As Peter Rushton has said of the sixteenth and seventeenth centuries, when male defamers were less in evidence, the level of such cross-gender defamation reflects the 'extent of popular male pressure on women's reputations' in a misogynist society.<sup>28</sup> Thus, defamation causes may be used to explore relations between men and women in the past.

Relations between plebeian men and women were altering in the eighteenth and nineteenth centuries and Somerset, because of its diverse economy and the presence of the city of Bath amidst a collection of lesser towns and rural villages, affords fruitful ground for the study of this phenomenon. The rough sexual egalitarianism of the local peasantry, for whom the double standard was 'muted' and 'virginity before marriage hardly an issue' coexisted,

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<sup>28</sup>Rushton, 'Women, Witchcraft and Slander,' p. 131.

in the seventeenth century, with a sexual restraint and a respect for traditional courtship and marriage customs and practises that were challenged as the eastern half of the county and the great wastes were enclosed, arable land was converted to pasture and the population began to shift into the county's market towns and great city.<sup>29</sup> At the same time, the decline of the cloth industry undermined occupational subcultures and reduced the availability of by-employments that had contributed to plebeian family survival throughout the county. The disruption of family economies, the reduction of work opportunities for women, the proletarianisation and pauperisation of male agricultural labourers and clothworkers and, in the latter part of our period, direct competition for jobs by men and women redefined material roles and recast power relations within families and between unrelated men and women.<sup>30</sup>

Ideology, too, exerted pressure on gender roles, though often in a direction contrary to that exerted by social and economic change. It was also in the eighteenth

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<sup>29</sup>Quaife, Wanton Wenches, pp. 245; 179.

<sup>30</sup>Barbara Taylor, Eve and the New Jerusalem; Socialism and Feminism in the Nineteenth Century (New York: Pantheon Books, 1983), pp. 192-205, notes that the traditional sexual culture of the old skilled trades in London came under increasing attack in the 1830s and 1840s as material conditions led to a 'developing pattern of family instability and sexual insecurity' (p. 203). She places the rejection of Owenite ideas on marriage by working class women in this context.

century that gender roles and relations were being reconsidered among the elite and increasingly polar definitions of masculinity and femininity were emerging as part of a new ideal in personal, and particularly marital and domestic, relations. Randolph Trumbach has argued that such manifestations as the multiplication of wife sales after 1750 signal the arrival of this new ideal, with its stress on intimacy and equality, among the plebs. Where in the past women had needed divorce as protection from cruelty and desertion, it was now being used by men to protect 'domestic tranquility against a sexual freedom in women which they could not yet face'. Trumbach notes that the ideological shift toward equality represented by changes in plebeian divorce took place within a patriarchal context (it was men who sold their wives) and made use of popular cultural forms such as the public wife sale.<sup>31</sup> The incorporative powers of plebeian sexual culture were still intact in the mid-eighteenth century and even such direct intervention in plebeian sexual life as Lord Hardwicke's Act, which introduced a distinction between the married and the unmarried (and between licit and illicit sexuality)

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<sup>31</sup>Randolph Trumbach, 'Kinship and Marriage in Early Modern France and England: Four Books', Annals of Scholarship 2 (1981): 124-25. For the development of elite attitudes see his book, The Rise of the Egalitarian Family; Aristocratic Kinship and Domestic Relations in Eighteenth-Century England (New York: Academic Press, 1978).

that had been widely ignored by the plebs, met with uneven success.<sup>32</sup>

The disruption of plebeian social and economic life and the extensive, but not unopposed, dissemination of an upper class sexual ideology is recorded in the annals of defamation as well as in the demographic data of parish registers. The rise in the rates of bastardy and prenuptial pregnancy indicate that courtship and marriage patterns were changing; and the same haziness as to acceptable or tolerable sexual behaviour that threw the relationship between pregnancy and marriage into question made it more difficult to define and defend the reputations of singlewomen. Likewise, the growing interest in female adultery and the new uses of divorce that point to alterations in attitudes towards marriage are accompanied by a shift in the church courts' clientele toward married women defending their reputations for fidelity. Lastly, the tensions generated by the disparity between the evolving material roles and power relations of plebeian men and women and the new definitions of masculinity and femininity against which individuals were judged found expression in defamatory confrontations. The late adoption of the double standard reinforced plebeian patriarchy and inflated the significance of wifely infidelity at a time

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<sup>32</sup>Weeks, Sex, Politics and Society, p. 24.

when men were being forced to support their families singlehandedly on inadequate wages and women--who were being directed homewards to cultivate domestic virtues--were trading in their spinning wheels for demoralising poverty or rough day labour. The contentious gender and power relations of the period are thrown into bold relief as men repeatedly defame women who exercised authority over them, calling their femininity into question by publicly labelling them as whores.

The material in this thesis is divided into sections that reflect the themes--the use of law and legal institutions and the evolution of plebeian sexual culture and gender relations--outlined above. After introducing the county of Somerset and the local church courts in Chapters 2 and 3, we will focus, in the second section, on defamation litigation. Chapter 4 establishes the legal and institutional context within which litigants and court personnel operated. Chapter 5 describes the men and women who came to Wells as plaintiffs, defendants and witnesses and analyses the language used by defamers to abuse their victims. The next section moves beyond the courts to explore the relationship between defamation and plebeian sexual culture. In Chapter 6 we will consider gender relations and especially the way men used sexual insult to discipline women who attempted to exercise authority over them. Chapter 7 comprises two case studies of defamed

singlewomen and traces transitions in the definition and defence of reputation. Chapter 8 is set in the city of Bath in the first half of the nineteenth century and explores a series of relations and locations that produced distinctly urban defamatory incidents. We will turn to male reputation in Chapter 9. In this chapter we will make use of a range of sources to define male reputation and to demonstrate the way in which changes in the sexual economy of the eighteenth and nineteenth centuries came to be reflected in definitions of male sexual reputation.



**SECTION ONE: THE COUNTY AND THE COURTS**

## CHAPTER 2

## SOMERSET

I. Introduction

Celia Fiennes, riding through Somerset on horseback in the late seventeenth century, described it as 'a good fruitfull country, much on inclosures'.<sup>1</sup> Defoe, writing in the 1720s, had more to report but he, like Fiennes, noted the prosperity of Taunton and Bath ('the resort of the sound, rather than the sick') and was quick to praise the county's fruitfulness.<sup>2</sup> Of the fat oxen, the Cheddar cheeses and the colts, Defoe observed 'That every county furnishes something for the supply of London, and no county in England furnishes more effectual provisions, nor, in proportion, a greater value than this'.<sup>3</sup> He identified the topographical basis of Somerset's rich grazing and prosperous dairies: the central moors, or Levels, where the meadows and pastures were renewed each year by floods that also left roads impassable and severed the northeast of the county from the southwest during the winter months.

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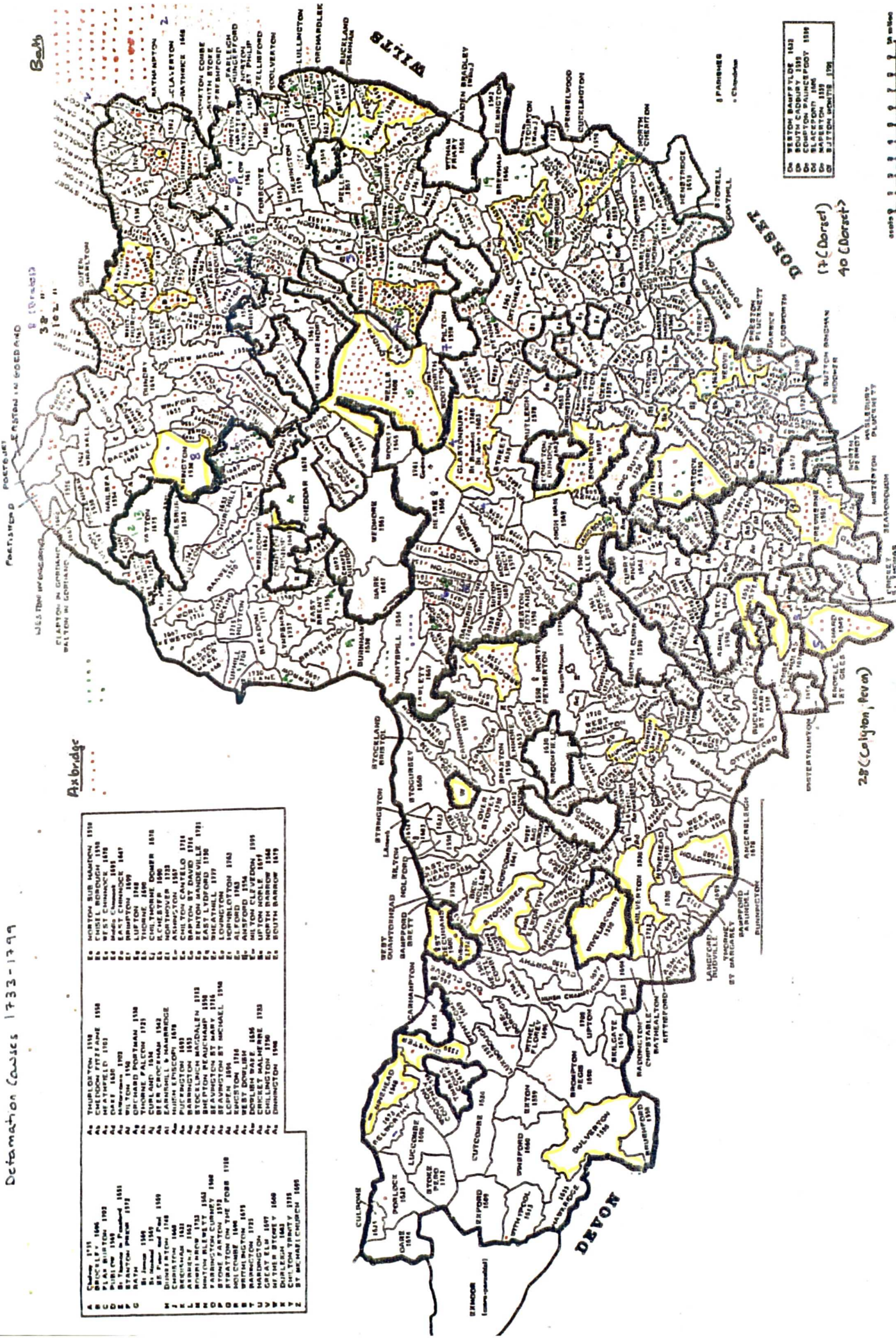
<sup>1</sup>Celia Fiennes, The Journeys of Celia Fiennes (London & Sydney: Macdonald & Co. Ltd., 1983), p. 34.

<sup>2</sup>Daniel Defoe, A Tour through the Whole Island of Great Britain (London: J.M. Dent & Sons Ltd., 1974), 2: 34.

<sup>3</sup>Ibid., 1: 271.

Detonation Causes 1733-1799

A	Chelms 1715	W	WILTON 1715
B	BRIDGLEY 1696	X	CHURCH 1715
C	CLAYTON 1702	Y	CHURCH 1715
D	CLAYTON 1702	Z	CHURCH 1715
E	CLAYTON 1702		
F	CLAYTON 1702		
G	CLAYTON 1702		
H	CLAYTON 1702		
I	CLAYTON 1702		
J	CLAYTON 1702		
K	CLAYTON 1702		
L	CLAYTON 1702		
M	CLAYTON 1702		
N	CLAYTON 1702		
O	CLAYTON 1702		
P	CLAYTON 1702		
Q	CLAYTON 1702		
R	CLAYTON 1702		
S	CLAYTON 1702		
T	CLAYTON 1702		
U	CLAYTON 1702		
V	CLAYTON 1702		
W	CLAYTON 1702		
X	CLAYTON 1702		
Y	CLAYTON 1702		
Z	CLAYTON 1702		



Dorset  
 Devon  
 17 (Dorset)  
 40 (Devon)



[illegible]

- red dots: Episcopal Court causes
- green dots: Archdiocesan Court of Wells causes
- purple dots: other penances, present etc.
- numbers: causes involving two parishes
- : peculiar

Of even greater interest to Defoe than agriculture was the cloth trade, flourishing in towns such as Taunton and Frome, Bruton and Shepton Mallet and extending its tentacles far into the countryside where poor women spun yarn for the great clothiers. One Taunton manufacturer assured Defoe that 'there was not a child in the town, or in the villages round it, of above five years old, but, if it were not neglected by its parents, and untaught, could earn its own bread'.<sup>4</sup> Religion, too, came under Defoe's scrutiny, from the clergy of Wells who 'live very handsomely' to the Dissenting towns of west Somerset, with their meeting houses, preaching academies and bitter memories of the aftermath of the Monmouth Rebellion.<sup>5</sup> Even Defoe's itineraries emphasise the importance of the historical division between east and west Somerset along the line of the River Parrett. West Somerset, early enclosed and sparsely settled, maintained links with Devonshire most obviously through participation in the worsted trade, while east Somerset, along with Wiltshire and Gloucestershire, made up the West Country woollen cloth region.

In this chapter we will, like Defoe, attempt to describe some of the outstanding features of the county:

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<sup>4</sup>Ibid., 1: 266.

<sup>5</sup>Ibid., 1: 277; 267.

its population and its towns; its agriculture and its industry; its religious complexion and its geographical peculiarities. We will also be concerned with change, because sexual insult and the use of the church courts to restore one's good name were not timeless practices, immune to the demographic, economic, social and environmental upheavals of the eighteenth and nineteenth centuries. What Fiennes and Defoe were describing was in many ways the past rather than the future of the county. One of the richest counties in England from the Middle Ages, its economy based on the cloth manufacture, capitalist agriculture and coastal trade, Somerset entered the eighteenth century with a large and growing population. In the century and a half that followed, the years encompassed by this study, the county experienced an economic and social transformation which altered both its position in the nation and the lives of those who lived within its boundaries. The men and women of 1850 would come to know a very different world from that of their early eighteenth-century ancestors and in the course of those 150 years they would cease to use the church courts to defend their sexual reputations.

A consideration of the changes that would have had the most impact on the men and women who appeared regularly in the ecclesiastical courts will lead us to explore in some detail topics that Defoe neglected or noted in

passing, among them the sex distribution of the population, the growth of the towns, enclosure and women's work. Our perspective will be less global than Defoe's, both geographically and socially. Our major contrast will not be with the 'Whole Island of Great Britain', but among areas within the county, and especially between the court-using east and the less litigious west. And because those who initiated, witnessed or defended defamation causes were drawn from the ranks of labourers, small craftsmen, tradespeople and shopkeepers, and from particular occupational groups, we will ignore the great families whom Defoe assiduously catalogued and pay only oblique attention to both the very poor and the substantial middling sort--the farmers in the countryside and the merchants in the city.

The final aim of this chapter is to define the social and geographical boundaries of court use. This involves identifying groups and individuals whose religious or occupational traditions, whose gender or social position, whose geographical isolation or mobility, precluded or discouraged verbal insult or litigation in the church courts. Excluding factors multiplied throughout our period, bringing a decline in defamation litigation and probably in defamation as well. The re-evaluation of public sexual insult and of traditional modes of defending one's name point to corresponding alterations in plebeian values



and plebeian sexual culture and it is here that the significance of the study of defamation lies.

## II. Geography, Population and Towns

At the end of the eighteenth century, Somerset was the eighth largest county in England and it supported a variety of climates and topographies that reflected the geographical conjuncture of western upland England and southern and eastern lowland England within its borders. Hilly districts, most notably Exmoor in the far west, the Quantocks and the Blackdowns, north and south of Taunton respectively, and the Mendips, stretching from near Frome in the east to Winscombe in the northwest, constituted regional boundaries within the county. Of the principal rivers--the Frome and the Avon in the northeast, the Barle and the Exe in the west and the rivers on either side of the Parrett--none was large. Only four, the Parrett, the Yeo, the Tone and the Avon, were navigable, for short distances, at that time.<sup>6</sup> The Parrett and the Brue contributed to the annual inundation of the Somerset Levels, the central marshlands which remained one of the county's distinctive geographic features into the nineteenth century. Most of the common land, the vast moors that dazzled travelers,

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<sup>6</sup>John Billingsley, General View of the Agriculture of the County of Somerset, with Observations on the Means of Its Improvement Drawn Up in the Year 1795, for the Consideration of the Board of Agriculture and Internal Improvement, 2nd ed. (Bath: R. Cruttwell, 1798), p. 16.



could be found in the Levels at the end of the eighteenth century; the rest was located in the far West in the barren uplands of Exmoor. Settlement patterns and agricultural practises, the location of the cloth industry and of mining operations, and the state of communications were all influenced by the county's diverse geography.

Somerset was already rich and densely populated in the sixteenth century.<sup>7</sup> Prosperity continued into the following century, and there is no doubt that Somerset remained one of the most densely populated counties in England up to the end of the eighteenth century, but its growth faltered in the nineteenth century and came to a halt around 1850. What we know about the size and the distribution of the population prior to the first census is largely speculative. In 1801 it was estimated that the population had grown from just under 200,000 in 1700 to its

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<sup>7</sup>R.W. Dunning, A History of Somerset (Mount Street, Bridgewater, Somerset: Somerset County Library, 1978), p. 50. The data in this section are drawn from the following documents, unless otherwise noted: Abstract of the Answers and Returns made pursuant to an Act passed in the Forty-first Year of His Majesty King George III Intituled 'An Act for taking an Account of the Population of Great Britain and the Increase or Diminution thereof' (hereafter Census of 1801); Census of Great Britain in 1851 (London: Longman, Brown, Green, and Longmans, 1854) which was reprinted, in a condensed form, from the official report, and Edward Cheshire, The Results of the Census of Great Britain in 1851, rev. ed. (London: John William Parker and Son, 1854) (both hereafter referred to as Census of 1851); and a decennial population table, beginning in 1801, for all the parishes of Somerset, printed in VCH, 2:338-52. Some of the calculations in the 1851 census are based on the registration county, a rationalised district with a somewhat larger total population of 456,259.

present level of 273,577.<sup>8</sup> In 1851, it stood at 443,916, a growth of 62% during fifty years when the population of England more than doubled. In 1801, Somerset had the sixth largest population of the forty counties of England, and only ten counties had a denser population; by 1851, sixteen counties had denser populations and twenty-six had exceeded Somerset's growth rate. The county, while following the same pattern of growth from decade to decade as England did between 1801 and 1851, consistently lagged behind. In the decade following 1841 its growth dropped precipitously to 2% while the English population grew by 13%. Agricultural depression, the death of the cloth industry and the diminution of Bath's attractiveness as a resort forced many to leave the county.

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<sup>8</sup>This estimate is taken from the census. Eighteenth-century writers give higher estimates. The anonymous author of A Compleat History of Somersetshire (Sherborne, 1742), p. 3, counted 44,686 houses while the author, also anonymous, of Rural Elegance Display'd in the Description of Four Western Counties, Cornwall, Devonshire, Dorsetshire and Somersetshire (London: Staples Steare, 1768), pp. 299-300, estimated a population of 280,000 inhabiting 50,000 houses. This would assume an average household size of 5.6, well above the mean household size actually found in eighteenth-century enumerations. In Frome, in 1785, the mean size of the household was 4.7, while in Taunton five years later it was 4.6. (This latter figure becomes 4.9 if one computes mean inhabitants for occupied houses only.) The census of 1801 showed that Taunton's population had grown from 5472 to 5794 (6%) in eleven years and that mean inhabitants per occupied house had increased to 5.1. For eighteenth-century enumerations, see P.J. Corfield, The Impact of English Towns 1700-1800 (Oxford: Oxford University Press, 1982), pp. 129; 183.

As the population of Somerset ceased to grow it arranged itself within its borders in new ways. Trends observed in the eighteenth century found confirmation in periodic census reports from 1801. Towns dependent on the cloth manufacture, which had experienced earlier and highly visible population booms, such as Frome, lost population as they lost trade. Bath, which had multiplied its population by twelve in the eighteenth century, barely grew at all as it settled into its new role as a retirement town. Commercial arrangements built around new transportation networks caused some towns to lose their markets; they were growing slowly or not at all by 1851. Other towns, however, made considerable strides. Yeovil, home of the glove manufacture, grew by 179% in the fifty years between 1801 and 1851 and Bedminster, rapidly absorbed into the Bristol conurbation, grew by 493% in the same period. Both Taunton and Bridgewater were saved by becoming important railway centres.<sup>9</sup> Though no major industries replaced the cloth manufacture, and Somerset gained no new manufacturing towns, the newer northern mining centres, such as Midsomer Norton, attracted population from the less prosperous southern coalfield and from surrounding agricultural

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<sup>9</sup>On population decline, and on the growth of towns, see Dunning, Somerset, pp. 86; 92. For industry, Yeovil and the railroads see T.J. Hunt, Aspects of Somerset History (Taunton: Somerset County Council, 1973), p. 53.

parishes.<sup>10</sup> The Somerset coast, never populous, declined further when it was forsaken by the herring, but showed new life and unprecedented population growth in the nineteenth century, and particularly after the extension of the railroad, as new seaside resorts, such as Weston-super-Mare, sprang up around the ancient fishing ports.<sup>11</sup> In the countryside, the rural population reached a peak in 1841 and then began to fall off; but it, too, was rearranged. Most notably, the Levels, as a result of drainage, became simultaneously less isolated and more heavily settled.<sup>12</sup>

Somerset was not an urbanised county by any measure, but a transfer of population from the smaller parishes to the larger ones lent increasing weight to the county's

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<sup>10</sup>John A. Bulley, 'The Development of the Coal Industry in the Radstock Area of Somerset from Earliest Times to 1830' (M.A. dissertation, London (external), 1952), pp. 117-19; 173-74 shows that between 1800 and 1831 the parishes in the northern and central part of the coalfield were growing rapidly, while those in the declining southern sector and the agricultural parishes on the periphery were growing slowly or losing population.

<sup>11</sup>William George Maton, M.A., Observations Relative Chiefly to the Natural History, Picturesque Scenery and Antiquities, of the Western Counties of England, Made in the Years 1794 and 1796, 2 vols. (Salisbury: J. Easton, 1797), 2: 93; 97-8; 109 and Hunt, Somerset History, p. 53. The eighteenth century coastal trade is discussed in n. 34 below.

<sup>12</sup>On rural population, see Dunning, Somerset, p. 70. For the Levels, see the maps in Michael Williams, The Draining of the Somerset Levels (Cambridge at the University Press, 1970), pp. 194-95.

towns.<sup>13</sup> And, as we will demonstrate, Somerset's towns, and particularly its market towns, played a distinctive and growing role in defamation litigation in our period. There were thirty market towns in the county, including the city of Bath, eleven in the eastern division and nineteen west of the Parrett.<sup>14</sup> (Bath, because of its size, economy and

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<sup>13</sup>Population material in this section is taken from the censuses of 1801 and 1851 unless otherwise noted. The shift in population is discussed in Chapter 5 below.

Corfield, in her illuminating book, The Impact of English Towns 1700-1800, defines a town as any settlement of 2500 or more based on a non-agrarian economic function with a distinctive social and cultural identity, but she observes that the trend in urbanisation remains the same whether the threshold is raised or lowered (p. 6). She concludes that less than 20% of the population of England and Wales lived in sixty-eight such towns in 1700, while somewhat more than 30% lived in 188 towns in 1801 (p. 7). Thus, both the number of towns and the urban population were growing. For Somerset, I have chosen to use the market towns (some of which were quite small) and the occasional large parish to measure urban population because they differed significantly from the surrounding rural parishes in their size and economic function and in their defamatory activity. Thus, in 1801, while 29% of the county's population could be found in towns of 2,500 or more, 37% lived in market towns. In 1851, when more than half the nation's population lived in 580 towns (market towns and larger), only 36% did so in Somerset. If one includes the largest parishes, 45% of Somerset's people lived in towns in 1851, a figure that bears reducing by those living in defunct market towns. The Census of 1851, for instance, lists only fifteen principal towns in the county.

<sup>14</sup>J.H. Bettey, Rural Life in Wessex 1500-1900 (Bradford-on-Avon, Wiltshire: Moonraker Press, 1977), p. 73, cites thirty market towns in 1702, twenty-five in 1720 and thirty-two in 1792; all sources vary. I have classed the following thirty towns as market towns: Bath, Wrington, Bruton, Frome, Glastonbury, Keynsham, Wincanton, Wells, Shepton Mallet, Axbridge and Pensford/Publow (these two parishes were small and often seem to have functioned as one market town) in the east; Ilminster, Dunster,

social organisation, as well as its unique contribution to nineteenth-century defamation litigation, will be considered separately in Chapter 8.) In 1801, six of these towns had populations under 1000 and eleven had populations over 2,500. Fifty years later there were only three very small market towns left and four more towns had passed the 2,500 mark.

While most of these markets served a local clientele (John Collinson, Somerset's foremost antiquarian, described Wrington market as 'trivial') several were large enough to attract customers from a wide area.<sup>15</sup> This 'streamlining of the market network' in the eighteenth century reflected the spread of commercial specialisation, the construction of new transportation networks and alterations in the style of trading.<sup>16</sup> Frome, Shepton Mallet and Taunton were known for their cloth markets, for instance, while the Wincanton and Bruton markets were notable for grain. Markets rose and fell as transportation networks shifted. Turnpike trusts first improved the roads

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Minehead, Crewkerne, Chard, Wellington, Wiveliscombe, Martock, Milverton, Langport, Somerton, Yeovil, Ilchester, Dulverton, St. Decuman's, Stogumber, Nether Stowey, Bridgewater and Taunton in the west.

<sup>15</sup>John Collinson, The History and Antiquities of the County of Somerset, 3 vols. (Bath: R. Cruttwell, 1791), I: 206.

<sup>16</sup>I have adopted this, and other, concepts from Corfield, Towns and especially from her chapter on market towns.

in the vicinity of Bath; after 1750 they proliferated and increasingly abandoned the old upland routes through the county. At the end of the century, canals revolutionised the transport of heavy materials, such as coal, and some continued to prosper for a number of years after the advent of the railroad. The elevation of one market could mean the downfall of its smaller neighbour. The growth of Somerton in the early eighteenth century caused nearby Glastonbury to decline; yet less than 100 years later, Somerton could be described as having 'an air of neatness and respectability, but no longer any pretensions to be ranked among the principal towns in the county'.<sup>17</sup> Changes in the style of trading led to an abandonment of the open market with its tolls, regulations and direct dealing in bulk. Transactions moved indoors to the inns where middlemen could survey samples. The inn, always essential to the commercial life of market towns, adapted to this alteration in business habits and continued to thrive; even Pensford, a very small market town, had five inns in 1830.<sup>18</sup> It also continued to play an important role as a setting for defamatory incidents.

A variety of factors accounted for the temporary pre-eminence of individual towns, not least among them the extent to which the concentration of population and

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<sup>17</sup>Maton, Observations, 2: 28-29.

<sup>18</sup>Bettey, Wessex, p. 50.

commercial services had attracted industry. In comparing the eastern and western divisions of the county, it is immediately apparent that the market towns of the east suffered most from the decline in the cloth manufacture. In 1795, John Billingsley pronounced Bath and Frome the only important weekly markets in the northeast.<sup>19</sup> In the east, only Wells and Wrington surpassed the county's rate of growth for the period from 1801 to 1851, and only Glastonbury joined the ranks of the largest market towns. Seven of the nineteen western towns grew faster than the county and the number of large towns went from seven to ten by 1851. Throughout the county the big towns were getting bigger as the small ones lagged behind. Of the biggest towns in 1801, only Shepton Mallet, Wiveliscombe, Wellington and Frome--all dependent on the cloth industry--failed to match the county's growth rate over the next five decades. Bedminster, the remaining parish in the county with more than 2,500 inhabitants in 1801, grew at an astonishing rate in the first half of the nineteenth century.

Market towns brought together strangers, friends and slight acquaintances at their regular markets and also in their lengthening streets as people from the surrounding parishes followed their neighbours into the towns to share

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<sup>19</sup>Billingsley, General View of Agriculture, p. 160.



in the better, and rising, standard of living.<sup>20</sup> They also brought together more women than they did men, especially in the eastern division. In 1801 only Keynsham, Frome and Pensford/Publow in the east had sex ratios (the number of women per 100 men) below that of the county; while eleven of the nineteen western towns exceeded the county sex ratio. (Bedminster also had a higher sex ratio, as did the other two non-agricultural parishes with populations greater than 1500). Not only were there more women in towns, but their economic and domestic roles often differed from those of rural women. Many urban households, as P.J. Corfield observes, were economic units: 'That conferred on urban women in particular economic importance and a relatively independent status'.<sup>21</sup> Inns and shops, concentrated in market towns, were major employers of women, married, widowed or single. As of 1830, Dunster supported five inns and twelve or thirteen shops along with its weekly market and Minehead had nine pubs and twenty shops.<sup>22</sup> Towns afforded greater visibility to women

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<sup>20</sup>Much immigration to towns was drawn from the immediate vicinity and formed part of a larger migratory pattern of moves over short distances: Corfield, Towns, pp. 102-3. Corfield also thinks that the standard of living was probably higher in the towns, and rising over the long term (p. 137).

<sup>21</sup>Ibid., p. 127.

<sup>22</sup>For Dunster and Minehead, see Savage, Carhampton, pp. 382-83; 623. Pensford, a small market town in the 1830s, had in addition to its five inns, several

and Corfield suggest that 'the changing roles of women in eighteenth-century society became a special topic for uneasy satire'.<sup>23</sup> Defamation was a more direct weapon than satire, though it often had its roots in the same uneasiness. The numbers of women, their independence and their employment in the vulnerable service trades--as shopkeepers, publicans, landladies and pawnbrokers--made towns fertile ground for defamation litigation.

### III. Agriculture, Industry and Poverty

Somerset has always been an agricultural county and was well cultivated long before 1700. A wage list promulgated at Quarter Sessions in 1735 sets wages for five major agricultural employments, from mowing to digging, while non-agricultural workers are considered under only two headings, 'Servants' and 'Masons, Carpenters and Tylers'.<sup>24</sup> Though primarily a pastoral area in our period, its principal produce fatted oxen, sheep, hogs, butter,

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shops, a baker, a tailor, a miller, a butcher, a cooper, a farrier, a saddler, a wheelwright, a painter, blacksmiths, carpenters, shoemakers, carriers and several general dealers: Bettey, Wessex, p. 50.

<sup>23</sup>Corfield, Towns, p. 127.

<sup>24</sup>Q/SR (Wells, 1735) Wage List. The weavers had won the right to have their wages fixed by magistrates in the 1720s, and fought throughout the eighteenth century to have the rates enforced, but no clothworkers are included in this list: J.L. Hammond and Barbara Hammond, The Skilled Labourer, with an introduction by John Rule (London and New York: Longman, 1979), p. 126.

cheese and cider, agricultural activity within the county was notably diverse. This was the result of its varied geography, what John Billingsley, Somerset's chief promoter and spokesman for the agricultural revolution, called its 'lofty hills, rich level plains, and bold aspiring woods'.<sup>25</sup> If the division between east and west Somerset is significant to this study in distinguishing two regions in which broad social and economic differences may be linked to two very different records of court use, the geographical division of the county into three districts is of particular importance to the consideration of agriculture (See Map). The division favoured by Billingsley defined a northeast district (the area from Uphill to Frome, bounded on the south by the Mendips), a southwest district (the area to the west of Chard and Bridgewater Bay) and a middle district between them. Different soils, climates and altitudes were accompanied by a wide array of land tenures, agricultural practises, rates of enclosure and settlement patterns, but the three

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<sup>25</sup>Billingsley, General View of Agriculture, p. 14. This section relies heavily on Billingsley's survey and to a lesser extent on other eighteenth-century compilations, including William Marshall, The Rural Economy of the West of England: Including Devonshire and Parts of Somersetshire, Dorsetshire, and Cornwall, 2 vols. (London, 1796). Among contemporary secondary sources, the most useful were Dunning, Somerset, VCH, vol. 2; and Joan Thirsk, 'The Farming Regions of England and Wales' in H.P.R. Finberg (ed.), The Agrarian History of England and Wales IV: 1500-1640, ed. Joan Thirsk (Cambridge, 1967), pp. 71-80 (hereafter Agrarian History IV).

districts, separated by upland areas, may be identified with four main farming regions and by the distribution of specific non-agricultural employments.<sup>26</sup> In the wood pastures of east Somerset, clothmaking, dairying and arable farming supported a dense population. The more fertile south and west were divided among the rich lands of the valleys and coasts, given over to mixed farming; the pastoral moorlands and marshes, where grazing occupied the high moors, rearing and feeding took place in the bottoms and fattening was carried out in the fertile marshlands; and the fenlands of the Levels which covered much of the middle district. As the map illustrates, most deforestation causes originated in the northeast and, to a lesser extent, the middle district.

In the northeast grassland predominated with dairying and grazing in its southwest, sheep in the north and field crops and orchards and gardens in the vicinity of Bath and Bristol. Oats, wheat, beans and pease were grown in the area. For the cloth manufacture, teasels were raised around Wrington, and woad in Keynsham. Dairies housed cows and vast numbers of pigs, who consumed the whey; elsewhere sheep or fowls were the chief form of

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<sup>26</sup>For instance, Michael Williams discovered twelve major crop combinations and twenty-two minor combinations in the 1801 crop returns for the county, reflecting the varying lithological, soil and climatic conditions within the county: 'The 1801 Crop Returns for Somerset', Somerset Archaeology and Natural History 113 (1969): 82.

livestock. While Billingsley found many large properties (£2000 to £6000 per year) and 'splendid gentlemen's seats', far more common was the small family farm of less than £200 per year: dairies small enough to be run by wives while their husbands laboured elsewhere, and grass farms that left time and spare hands to find employment in the region's domestic industries. At the bottom of the social scale were the poor who squatted in the forests, prior to enclosure, and congregated around Bath and the manufacturing towns. The principal unenclosed wastes, in Billingsley's time, included Broadfield Down, near Wrington; Lansdown, near Bath; and the thousands of acres of moor in the northern Levels. In addition, many common fields in the arable villages of northeast and central Somerset remained unenclosed until the late eighteenth century. Settlement, most typically, was in small hamlets and scattered farms, but further south, where open-field arable farming was practised, small nucleated villages were common.<sup>27</sup> At the end of the eighteenth century, when prices were rising, men's wages remained at 7s. a week with beer or cider. Proximity to a manufacturing centre might drive up wages at harvest-time, but this was less of a factor as the woollen manufacture declined.

Billingsley's middle district includes several

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<sup>27</sup>Marshall, West of England, 2: 137; Agrarian History IV, pp. 79-80.

arable areas where land was tilled in common fields; the forest of Neroche, which extended unlimited stocking rights through several parishes; and the remainder of the Levels. Turnips, wheat, barley, oats, beans and pease were the main arable crops; and oxen (fattened for the London and Bristol markets), sheep and dairy cows the main livestock. In the fertile southeast, between Shepton Mallet and Chard, corn was grown along with flax and hemp for the local manufacture and well-cultivated arable land was interspersed with pastures, meadows and orchards. The best wheat in the county came from the small farms on the south side of the Levels around Westonzoyland, where arable land was held in common fields. The several highland areas of the district practised different forms of agriculture: near the Wiltshire and Dorset borders, land was held in large farms and corn and sheep were the main produce; the inferior cornland of the Polden and Ham hills was held in small common fields; and the barren upland north and east of Sedgemoor was tilled in common fields. In the midst of the highlands were Somerton, renowned for its gardens, and Castle Cary, the seat of the local potato revolution. The small nucleated settlements of the Levels were geographically isolated during the wet winters, and their social structure and economic pursuits were typical of the fens: the gentry stayed away and the commoners who remained combined cattle rearing and feeding and horse-

breeding in the dry months with fowling, fishing, reed-cutting and peat-cutting during the wet ones.<sup>28</sup> In the reclaimed lands near the coast, large, detached grazing farms proved very prosperous in the second half of the eighteenth century, and small dairy farmers did well on the drier land. In the region as a whole, wages were less than in the northeast--men might earn 1s. a day plus cider in the winter--but provisions were cheaper.

Southwest Somerset was divided between hills and forests in 'a state of nature' and fertile slopes and plains which supported a husbandry similar to that of the middle district. The only waste of note that remained in this early-enclosed area was the desolate forest of Exmoor, at the western extremity of the county, almost 20,000 acres of moorland on which sheep and small horses summered.<sup>29</sup> In contrast to Exmoor was the Vale of Taunton Deane, where rich loam interspersed with clay or lighter mould supported everything from cattle to corn to the worsted manufacture: it was claimed that the land "needs no manure for the improvement of it".<sup>30</sup> William Maton described the area

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<sup>28</sup>Agrarian History IV, pp. 78-9.

<sup>29</sup>Billingsley, General View of Agriculture, p. 264. For Exmoor and its enclosure see A.H. Shorter, W.L.D. Ravenhill and K.J. Gregory, Southwest England (London: Thomas Nelson and Sons Ltd., 1969), pp. 230-31.

<sup>30</sup>Quoted in Rural Elegance Display'd, p. 280. Billingsley approved of almost everything about the Vale except its unusual inheritance customs which, among other

around Taunton as 'an unparalleled picture of fertility'. Small proprietors practised mixed farming in this area, grazing 'innumerable herds of cattle' on the rich moors, tending orchards, planting field crops and managing dairies.<sup>31</sup> Billingsley, in comparing the southwest with the middle district, found farms smaller, tillage more widely practised; and wages equivalent; provisions were 'comparatively moderate' and the worsted manufacture continued to employ many.

Billingsley set out not only to describe Somerset's agriculture, but to identify its deficiencies and suggest improvements. He found the cropping system of the northeast 'perverse and erroneous', the unreclaimed Levels a scandal and the southwest backward in its methods, immune to the beauties of sheepfolding and addicted to haulage by horse. Everywhere farmers relied too much on the natural fertility of the land and tithes, commons and land tentures remained obstacles to rational farming.<sup>32</sup> Though Billingsley's attempt to spread the gospel of the

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things, allowed widows to inherit and retain land after remarriage: General View of Agriculture, p. 268.

<sup>31</sup>Maton, Observations, 2: 37.

<sup>32</sup>On cropping, Billingsley, General View of Agriculture, p. 136. On land tenure and its relation to capitalist agriculture (and regional variation) see Billingsley; Marshall, West of England, Vol. 2 and R.S. Neale, Bath 1680-1850: A Social History or A Valley of Pleasure Yet a Sink of Iniquity (London: Routledge & Kegan Paul, 1981), p. 101.



agricultural revolution was not uniformly well-received, three major changes in local agricultural practises and in the rural environment, all of them commenced before Billingsley wrote, may be claimed as Somerset's legacy of agricultural improvement.<sup>33</sup> The enclosure of wastes, commons and open fields, particularly in east Somerset; a shift from arable to pasture; and the draining of the Levels all demonstrate that the agricultural economy of Somerset, increasingly integrated into the national market prior to 1700, was sensitive to alterations in local and wider demands.<sup>34</sup> Each involved the transformation of

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<sup>33</sup>The agricultural revolution, of course, left its mark in other ways. For instance, the introduction of turnips and carrots as field crops in the eighteenth century allowed farmers to keep more livestock; and the cultivation of potatoes had important implications in the 1840s: Betty, Wessex, pp. 30-1. The Napoleonic wars brought local agricultural revolutions to Taunton Deane and other areas, where methods, implements, crops and breeds were all improved (pp. 36-5).

<sup>34</sup>On a lesser scale, the cheese district of south Somerset became a butter district in the eighteenth century in response to rising butter prices in London: Marshall, West of England, 2: 148-49. Production for the national market provided Somerset with much of its contact with the world beyond its borders. Each year, thousands of cattle were brought to Somerset from Wales and Ireland, fattened and then driven to markets in Bristol and London (Betty, Wessex, pp. 84-5) and Minehead carried on a brisk trade importing Irish wool and Welsh coal and exporting oak bark and grain (Maton, Observations, 2: 97). The litigation between Cecil and Francis Symes poignantly illustrates the network of relationships, business and personal, that connected families in Somerset and Wales in the eighteenth century: Symes v. Symes, D/D/Ca 426 (1758) and D/D/C (1758); Athay and Walkley v. Brock and Symes, D/D/Ca 448, 449, 450, 426 (1757) and D/D/C (1757). Bristol, easily reached by land and by sea, provided another important

the landscape and population movements, and each brought changes in social relations and social structure that had their effect on the practise and prosecution of defamation.

The timing, method and outcome of enclosure contributed to the distinction between the eastern and western halves of Somerset. In the west, enclosure came early, was often accomplished by agreement among tenants (especially in arable areas), and resulted in either large tracts of sheep pasture held by powerful lords in the less fertile far west, or small farms, free of manorial control and devoted to dairying, arable farming and stockraising.<sup>35</sup> The enclosure of the open fields of the eastern half of the county (and it is here that a fully-developed common-field system existed), and of the wastes, commons and forests of the whole county, was concentrated between 1770, when the enclosure of Mendip commenced, and 1830, when the act to enclose the Forest of Neroche, near Taunton, was obtained.<sup>36</sup>

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focus. The small port of Watchet, for instance, shipped coal, seaweed ashes (to the glasshouses) and alabaster to Bristol in the mid-eighteenth century: Rural Elegance Display'd, p. 277. Bristol's significance as the major metropolitan centre declined, however, as nearby Bath grew.

<sup>35</sup>VCH, 2: 298; 304; 305.

<sup>36</sup>Joan Thirsk, in 'The Common Fields', Past and Present 29 (1964): 24, argues that the West was early enclosed because it was pastoral and did not have a fully-developed common-field system. Hunt, in Somerset History, p. 35, locates common-field systems in fertile areas, including the Vale of Taunton. On Mendip enclosure, about half-completed by 1795, see Billingsley, General View of Agriculture, pp. 48-78. For Mendip and the forest of Neroche, see Watson, Chronological History, pp. 168; 193.

This later enclosure movement was promoted by agricultural improvers, effected by Acts of Parliament and encountered more resistance.<sup>37</sup> The southeast, where the open-field system was most entrenched, was the main target of enclosure after 1794.<sup>38</sup>

The enclosure of eastern Somerset generated social tension that persisted after land had been divided and fences erected, for it was accompanied by a shift from arable farming to increasingly lucrative and less labour-intensive grazing and dairying. Somerset, known for its cattle and cheese, had been a predominantly arable county between 1540 and 1700.<sup>39</sup> Yet despite the impetus the Napoleonic wars gave to enclosure for the purposes of growing corn, Somerset was importing corn in Billingsley's time. He estimated that out of approximately one million acres, 65,000 were uncultivated waste; 20,000 were in common fields; 30,000 were in unenclosed marsh and fen; 260,000 were enclosed arable and convertible land; and 584,500 were enclosed meadow and pasture.<sup>40</sup> Aside

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<sup>37</sup>Billingsley, Marshall et al., argued long and hard for enclosure. For enclosure, see VCH, 2:561; 563; 566. For resistance, particularly on Mendip and Exmoor, see Dunning, Somerset, p. 67.

<sup>38</sup>For the open-field system in the southeast, see Hunt, Somerset History, pp. 35-6.

<sup>39</sup>Dunning, Somerset, p. 50.

<sup>40</sup>See Hunt, Somerset History, p. 36 and Billingsley, General View of Agriculture, p. 14 (on wheat)

from the implications for agricultural labour, the conversion of arable land to pasture could exacerbate a local grain dearth and lead to food riots.<sup>41</sup>

Pasture was also greatly extended by the draining of the Somerset Levels.<sup>42</sup> Subjected to heavy rainfall and high tides and prone to siltation along the coast, the Levels were isolated by flooding that lasted from November to February. In contrast to the market towns which bordered the Levels and generated a great deal of defamation litigation, the Levels themselves were the least litigious area in east Somerset in the eighteenth century, producing only a handful of litigants, in the coastal

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and p. 12 (on acreages). Williams, who squeezes every last bit of information out of the crop returns while carefully accounting for their shortcomings, notes that the incomplete returns account for approximately 92,000 acres of cropland. Because non-returning parishes tended to cluster in areas of least cultivation, this suggests that Somerset was even more pastoral than Billingsley suggested: '1801 Returns', pp. 71-2.

<sup>41</sup>Billingsley, General View of Agriculture, p. 153, claims that the grain dearth of 1795-6 was partly caused by the disposition to convert arable to pasture. The 1801 crop returns identified wheat as the county's first crop, grown in every parish submitting a return, but it was not produced in sufficient quantities to feed the population: Williams, '1801 Returns', pp. 73; 79 and Dunning, Somerset, p. 69. Bulley, 'Coal Industry', pp. 133-36 lists food riots, some involving colliers, in 1753, 1757 and 1766, but suggests that they ended then, despite recurring periods of dearth.

<sup>42</sup>This section relies heavily on Michael Williams's excellent book, The Draining of the Somerset Levels. See also Billingsley, General View of Agriculture, pp. 166-198.

parishes and the Polden uplands, prior to 1800.<sup>43</sup> While the edges of the Levels had been reclaimed in the Middle Ages by the monasteries that settled the 'islands', many inhabitants continued to lead a fenland existence, making use of the rich pastures in the dry months. The dissolution of the monasteries brought a period of relative inactivity. The Crown, now the biggest landholder in the area, found that its reclamation efforts met with resistance from the commoners, some of whom had profited from grazing rights and all of whom stood to lose from the enclosure of the Levels. It was not until the eighteenth century, when the potential of this marginal land was recognised, that serious and co-ordinated drainage schemes were prosecuted. The Rev. Stebbing Shaw described East Sedgemoor as 'a green marsh of vast extent' in 1788 and, like many of his contemporaries, he thought the 'verdant plains' of the Levels 'might easily be brought into cultivation'.<sup>44</sup>

From 1770, 'an unprecedented outburst of draining

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<sup>43</sup>The main road from Bristol to Bridgewater ran through Wells and along the Polden ridge and may have provided unusually good access to the church courts: Dunning, Somerset, pp. 79-80. Quaife, Wanton Wenches, p. 11, claims that the Levels were subject to strict manorial control in the seventeenth century, and their proximity to Wells and Glastonbury 'enabled the local authorities to exert effective discipline, at least in summer'. This does not seem to have been the case in our period.

<sup>44</sup>The Rev. Stebbing Shaw, 'Tour to the West of England, in 1788' in William Mavor, The British Tourists, 2nd ed., 6 vols. (London; 1800), 4: 256-57.

activity' began, urged on by such propagandists as Billingsley, funded by the newly rich graziers and dairy farmers of the clay belt, and implemented through acts of Parliament.<sup>45</sup> In some areas, overstocked commons and inequitable drainage duties convinced commoners that enclosure might be in their interest. Elsewhere, notably around the vast King's Sedgemoor, resistance continued.<sup>46</sup> By 1830, when this period of activity came to a close, the Levels were almost entirely enclosed and were drained in theory if not in fact. Though most of the drainage schemes proved to be failures and were poorly maintained and administered in the years that followed, the economic, social and environmental changes in the region were permanent. The fenland economy, which persisted in some parts of the Levels into the early nineteenth century, was replaced by an economy based on cattle fattening on the improved grasslands.<sup>47</sup> The economic pursuits of the poorer commoners, especially fishing, fowling and geese-rearing, disappeared with the extinction of the commonable wastes,

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<sup>45</sup>Williams, Somerset Levels, p. 123.

<sup>46</sup>The social rationale offered by Billingsley and others was that few cottagers lived near the moors anyway, and those with common rights would make enough off selling theirs to finance a considerable farming career, employing the entire family: General View of Agriculture, p. 148.

<sup>47</sup>An attempt to introduce arable farming proved less successful except along the coast where the effort involved in improving the soil and draining the land was diminished.

but some found alternate employment in the construction of drainage works.<sup>48</sup> The prosperity of the farmers and the breakup of huge estates reduced the distance between the very rich and the very poor in the coastal parishes. Throughout the Levels, physical isolation and backwardness declined; trees were planted and new field outlines emerged, determined by drainage schemes; and roads and settlements spread across the once deserted moors. These changes came too late to have a large impact on the volume of defamation litigation in the county. In the nineteenth century the number of causes heard at Wells was already small and the long-isolated fenland parishes had no tradition of court use. Yet after 1800 the Levels no longer stand out as a blank region on the map: the new roads, if nothing else, were bringing litigants to Wells.

The geography of Somerset's cloth industry and of its other non-agricultural employments immediately suggests how common it must have been to supplement agricultural work with part-time or seasonal by-employments, or to take time off from one's trade to help bring in the

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<sup>48</sup>Marshall, West of England, 2: 182-83, notes that 'the myriads of Geese are incalculable'. They were very profitable, kept on the moors year-round, fed beans in bad frosts and plucked repeatedly in the summer.

harvest.<sup>49</sup> The woollen manufacture in the Frome Valley and the worsted manufacture in the Taunton-Wellington district spread employment deep into the surrounding parishes in the form of spinning, dyeing and cardmaking. Sailcloth and linen were produced in several south Somerset parishes around Crewkerne and Chard, silk was woven in Yeovil and later in Taunton, Ilminster, Wells and Glastonbury, lace was made in Taunton and Chard, and dowlas-ticking came from South Petherton and the area round Wincanton. Yeovil was a national centre for the glove manufacture and gloving eventually spread to Martock, Montacute, Milborne Port and Stoke-sub-Hamdon. Stockings were knitted at Shepton Mallet, Wells, Glastonbury, Axbridge, Bruton and Wrington and shoes were made at Street for the Quaker firm, C and J Clark. Coal was mined throughout northeast Somerset, from as far west as Nailsea to Mells in the east. The Mendips were known for leadmining and papermaking; the Somerset coast for fishing, the export of kelp and, in the eighteenth century, smuggling. Quarrying was carried on around Bath, Ham Hill and Doultong. Calamine mining at

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<sup>49</sup>The boundaries between agricultural and non-agricultural occupations and between primary and secondary employment remained hazy into the nineteenth century. The census of 1801, for instance, lists 61,434 people in the county 'chiefly employed in Agriculture'; 54,053 'chiefly employed in Trade, Manufactures, or Handicraft'; and 154,032 'not comprized in the Two preceding Classes'. This occupational distribution ranked Somerset neither among the notably agricultural counties, nor among the industrial ones.



Wrington, Shipham and Rowberrow and glassmaking at Nailsea and Stanton Drew--the list could continue--all provided employment at different times between 1700 and 1850.<sup>50</sup>

Despite its primarily agricultural character, observers from Defoe onward noted the ubiquity of mills and the presence of towns and villages devoted entirely to industrial activity in Somerset. The anonymous author of Rural Elegance Display'd (1768) thought there were a greater variety of mills in Somerset than in any county in England. The Rev. Richard Warner described the stream running through Lansdown, outside of Bath, as completely given over to manufacturing at the turn of the century: within a two-mile stretch he sighted six mills.<sup>51</sup> Frome, in 1785, had forty-seven clothiers and only fifty-five

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<sup>50</sup>C. and J. Clark, begun as a sheepskin tanning and fellmongering firm in 1825, was still a small enterprise at the end of our period, employing domestic workers: Roger Clark, Somerset Anthology, ed. Percy Lovell (York: William Sessions Limited, 1975), pp. ix; xii. Miscellaneous smaller employments include the production and painting of japanned articles at Bridgewater, c.1797 (VCH, 2: 361) and the Fussell family edge-tool works at Mells. See especially Robin Athill, Old Mendip (Dawlish: David and Charles; London: Macdonald, 1964), pp. 70-90 on the rise of what amounted to a local dynasty. There were also, in the nineteenth century, a snuff and match mill at Chew Stoke, paper mills at Pensford and Watchet, a copper mill at Woollard and a brass mill and a dye-processing factory at Keynsham: Dunning, Somerset, pp. 72-3.

<sup>51</sup>Rural Elegance Display'd, p. 298: the author includes brass, copper, log-wood, wine, paper and corn mills. The Rev. Richard Warner, Excursions from Bath (Bath: R. Cruttwell, 1801), pp. 341-42. It is difficult to determine whether this stretch of stream is in Somerset or directly across the border in Gloucestershire.

farmers, and the vast majority of its workforce was engaged in clothmaking.<sup>52</sup>

The Somerset cloth manufacture was divided between two main regions, the east and the west, each of which pursued a separate branch of the industry.<sup>53</sup> Domestic industry formed an integral part of the economy of the wood pasture region of the east, where dairy farming and pastoral agriculture left time and hands free for by-employments. The Frome Valley had become the focus of the woollen cloth manufacture in the late Middle Ages when the mechanisation of fulling moved mills into the countryside in east Somerset, Wiltshire and Gloucestershire, close to sources of water power and of domestic labour free from guild restrictions. Heavily fulled white broadcloths became a specialty of the area in its period of greatest prosperity, as did a system of production that centred on clothiers who put out wool to spinners and yarn to weavers and supervised the finishing of the cloth in mills which

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<sup>52</sup>Sir Frederic Morton Eden, The State of the Poor, 3 vols. (London: J. Davis, 1797), 2: 643. The author of Rural Elegance Display'd, p. 288, describes Frome as 'larger than some cities' and most of its population as employed in the woollen manufacture and its subsidiaries, such as cardmaking.

<sup>53</sup>The following books are indispensable to the study of the Somerset cloth industries: Julia de L. Mann, The Cloth Industry in the West of England from 1640 to 1880 (Oxford: Clarendon Press, 1971); K.G. Ponting, A History of the West of England Cloth Industry (London: Macdonald, 1957) and The Woollen Industry of South-west England (Bath: Adams & Dart, 1971); and the Hammonds, Skilled Labourer, Chap. 6, 'The woollen and worsted workers'.

they frequently owned.<sup>54</sup> New export regulations forced a switch from undyed cloth to coloured Spanish medleys in the early seventeenth century and marked the beginning of the decline of the industry in the region, though the exploitation of new markets, especially the home market, brought a final period of prosperity that extended into the early eighteenth century. The medley trade, enthused Defoe, 'is so very considerable, so vast an advantage to England, maintains and supports so many poor families, and makes so many rich ones'.<sup>55</sup>

The eighteenth century was the 'sedate middle age' of the West Country cloth manufacture, as the importance of wool in the national economy diminished and the region ceased to be the nation's largest woollen cloth producer.<sup>56</sup> As exports declined and competition from Yorkshire and abroad intensified, the cloth towns of Somerset stagnated.

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<sup>54</sup>The organisation of production was, of course, more varied. According to Mann, Cloth Industry (pp. 92-7 and 115), landowning clothier/weavers who relied on market spinners and independent fullers who owned their mills survived into the eighteenth century, and small clothiers who had left the land remained in the nineteenth century. Medley producers organised their own spinning but often put out their dyeing; some weaving, especially of fancy cloths, was done in workshops from the 1780s. However, Mann (p. 102) does believe that the division between the 'gentlemen clothiers' and the 'inferior' ones was intensifying in the seventeenth and eighteenth centuries. See also the Hammonds, Skilled Labourer, p. 113.

<sup>55</sup>Defoe, Tour, 1: 271.

<sup>56</sup>Ponting, West of England Cloth Industry, p. 82.

(Some towns were saved by the adoption of new textile specialities: South Petherton turned to dowlas-ticking when broadcloth was no longer profitable and Taunton became a centre of the silk manufacture in the 1770s, then switched to machine lace in the 1830s as silk declined under the pressure of foreign competition.)<sup>57</sup> After mid-century, only the larger clothiers specialising in high quality cloths continued to prosper. Production contracted from the outlying areas, settling more firmly in the cloth towns, and the industry as a whole shifted towards the production of superfines, creating a brief period of recovery between 1770 and 1790.

Collinson was able to identify the parishes where the cloth manufacture still prospered and those from which it had departed. Among the former were Wiveliscombe, where 'A considerable woollen-manufacture has for more than two centuries been carried on in the town, and still flourishes'. Among the latter there were successes and failures. At Yeovil, 'There was formerly a large manufacture of woollen cloth; but now the principal one is of leather-gloves, in which a great number of hands are constantly employed'. But Pensford, Collinson lamented, was 'dreadfully decayed' and, 'bereft of the benefit of

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<sup>57</sup>For South Petherton, see Collinson, Somerset, 3: 106. For Taunton, see Dunning, Somerset, p. 72; Watson, Chronological History, p. 171. Taunton was finally saved by the arrival of the railroad: it became an important railroad town.

trade, many of the houses are fallen into ruins'.<sup>58</sup> Contemporaries often mistook temporary recovery for prosperity. Marshall had described Frome in the mid-1790s as a 'large well built place'--'Leeds, without its coals and dirt'--and Richard Warner claimed, in 1801, that 'an agreeable appearance of bustle and business catches the eye' in Frome, where all the men, women and children were dyed blue from the cloth they produced. Sir Frederic Morton Eden, however, reporting on the town in 1795, had noted that the poor rate was climbing rapidly. There were then 800 families receiving out-relief, many left destitute when men went off to war, and 120 people in the workhouse.<sup>59</sup>

In the second half of the eighteenth century, relations between clothiers and workers deteriorated as wages declined, machinery was introduced and clothiers established weaving workshops where the production of fancy cloths could be supervised.<sup>60</sup> The cloth industry was no

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<sup>58</sup>Collinson, Somerset, 2: 487 (Wiveliscombe); 3: 204 (Yeovil); 2: 429 (Pensford).

<sup>59</sup>Marshall, West of England, 2: 209; Warner, Excursions from Bath, pp. 38-9; Eden, State of the Poor, 2: 643-646.

<sup>60</sup>John Rule, The Experience of Labour in Eighteenth-Century Industry (London: Croom Helm, 1981), pp. 159-64: The worsted weavers were organised in clubs in the early eighteenth century and battled repeatedly with employers in times of prosperity in the first half of the century. After 1750, and particularly in the 1790s, the weavers of both regions were taking defensive action in a climate of rising unemployment and falling prices. The

longer maintaining and supporting the poor families of Somerset. Workers rioted against spinning machines at Shepton Mallet in the late 1770s and owners retreated; a mill was burnt at Beckington in 1802. Mechanisation was slowed in the woollen manufacture by organised worker resistance and local fear of unemployment, and because innovations that worked for cotton required considerable modification before they could be applied to wool. The war brought brief prosperity to some towns and prosperity enhanced the chances of successfully introducing machinery. From 1815 onwards the trend was towards mechanisation and the concentration of the manufacture in a few firms. In 1833, the cloth manufactory at Twerton, outside of Bath, was employing 800 indoor workers and 200 to 300 outworkers. Five years later, the county had thirty textile mills employing 2133 workers.<sup>61</sup> Mechanisation displaced many workers and as prosperity faded the region's clothworkers suffered unemployment and demoralisation.

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Hammonds in Skilled Labourer describe the desperate and unsuccessful efforts of the shearmen (pp. 134-49) and the woolcombers (pp. 153-59), some of the most highly paid clothworkers, to resist mechanisation, deskilling and, ultimately, destitution.

<sup>61</sup>For Twerton, where hand and power looms were used, J. Wroughton, 'Bath and its Workers' in John Wroughton, ed., Bath in the Age of Reform (1830-1841) (Bath: Morgan Books, 1972), p. 12; Mann, Cloth Industry, p. 186. Clothworkers were also concentrated at Lyncombe and Widcombe, where 565 males are listed in the 1831 census as participating in the manufacture of fine woollen cloth: Neale, Bath, p. 274.

The cloth manufacture in western Somerset was an outgrowth of the Devon worsted manufacture and benefitted from the seventeenth-century shift in fashion from woollens to worsteds. Its expansion, based on the production of serges, came to an end in the early eighteenth century but towns such as Wiveliscombe, Wellington and Taunton continued to thrive. Dominated by merchants and clothiers, the worsted manufacture made greater use of weaving workshops and a more fully proletarianised and organised workforce. The western cloth towns were bulwarks of Dissent, strong among both masters and men. Thomas Fox, a very successful west Somerset clothier, led his family's Wellington serge business into the nineteenth century by keeping abreast of changes in production, demand and the labour market. There were 3600 workers on his paylists in 1807, and though some of them were female outworkers, he appreciated the work discipline that could be enforced in his factories and weaving workshops. As a practising Quaker, Fox engaged in active philanthropy and worried about unemployment during the frequent dearths of the late eighteenth and early nineteenth centuries, but as a businessman he was intransigent during the many strikes of the period.<sup>62</sup>

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<sup>62</sup>For Fox, see Hubert Fox, Quaker Homespun. The Life of Thomas Fox of Wellington Serge Maker and Banker 1747-1821 (London: George Allen and Unwin Ltd., 1958). As the title suggests, Fox was not simply a clothier. The

Despite their ubiquity (the cloth industry was the largest employer in the county outside of agriculture until the nineteenth century), clothworkers are peculiarly silent in the annals of defamation in Somerset. It is possible that the clothworkers who appeared at Wells simply did not name their employment or that of their husbands; or, as much clothwork constituted a by-employment, litigants and witnesses may have named what they considered a primary employment. Certainly, many of the defamation causes heard at Wells originated in the cloth towns of the east. But it is more likely that these men and women were not pursuing defamation litigation in the church courts at all and that it was as market towns that centres such as Frome, Shepton Mallet and Glastonbury played a role in defamation litigation.<sup>63</sup> Women who contributed to the family income by spinning would be unlikely to describe themselves as spinners, but they would also tend to be drawn from a class--as the wives and daughters of

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book contains good descriptions of the organisation of his enormous operation and of the periodic confrontations between Fox and his workers.

<sup>63</sup>See *Newton v. Pinkard*, D/D/C (1762) and D/D/Ca 427, 428 (1762), a cause originating in the cloth town of South Petherton, for a rare example of witnesses identifying themselves as clothworkers. The female principals are not identified by occupation. Although clothworkers may have generally avoided bringing their own suits at Wells, they were prosecuted *ex officio* for such crimes as living in fornication. See, for example, *Hill v. Wyatt* and *Hill v. Hody*, D/D/Ca 448, 449, 450, 426 (1757) and D/D/C (1757).



agricultural labourers--that could rarely afford to use the church courts. Urban clothworkers, particularly in the west, were well-advanced in their proletarianisation in the early eighteenth century. For them, the traditional plebeian sexual culture that fostered defamation and defamation litigation may have been sufficiently undermined to allow for different standards of honour and the widespread adherence to Nonconformist sects may have fostered new methods of control. Finally, the weavers shared in a distinct sexual subculture built around high wages and the persistence of the domestic unit of production (the weavers alone, largely because of the very late introduction of the flying shuttle, remained primarily domestic workers until after 1850) and reinforced by endogamy.<sup>64</sup> It was, however, a subculture in retreat as wages plummeted throughout the second half of the eighteenth century. If at one time their economic independence had led the weavers to define and police their own moral boundaries, their pauperisation in the second half of our period would have left them too poor to use

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<sup>64</sup>Occupational endogamy could be crucial to the survival of the domestic unit of production, where a wife's skills were essential. In Bruton and Pitcombe, 85% of all local marriages in its history as a clothmaking centre were between partners who lived within four miles of the area, and some of the outsiders came from other West County clothing centres: Donald M. McCallum, 'A Demographic Study of the Parishes of Bruton and Pitcombe in the County of Somerset', Somerset Archaeology and Natural History, 121 (1977): 80.

the church courts at all. Thus, modes of production, occupational traditions, religious preferences and poverty all conspired to keep the clothworkers of Somerset away from the church courts.

Much the same could be said of the miners, who constituted the other occupational group of significance in the county and who are similarly under-represented at Wells.<sup>65</sup> The geographically isolated Mendips, though increasingly subject to cultivation as commons and wastes were enclosed, had long been the home of Somerset's lead and calamine miners. Lead miners were governed by their own ancient customary law, administered and enforced by mineral courts. Many lead miners became calamine miners in the eighteenth century as lead excavations were exhausted and as innovations in the brass manufacture put a premium on zinc.<sup>66</sup> The Somerset coalfield, small and isolated, serving a limited market and structured around traditional methods of skilled mining and family ownership, expanded

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<sup>65</sup>For Somerset mining, see Billingsley, General View of Agriculture, pp. 20-30; Maton, Observations, 2: 121; 127-36; 163-65 (especially on the dangers of lead and calamine mining); J.W. Gough, The Mines of Mendip, rev. ed. (Newton Abbot: David & Charles, 1967) (on lead and calamine mining); C.G. Down and A.J. Warrington, The History of the Somerset Coalfield (Newton Abbot: David & Charles, n.d.); John A. Bulley, '"To Mendip for Coal"--A Study of the Somerset Coalfield Before 1830', Somerset Archaeological and Natural History Society Proceedings, 97 (1952): 46-78 and 'Coal Industry'.

<sup>66</sup>VCH, 2: 378.

in the eighteenth century, as new fields opened, and especially after 1790, as canals facilitated transport to the towns. Even with older and less accessible pits around Paulton, Timsbury and the Mendips closing, there were in the early nineteenth century sixty major collieries and approximately thirty smaller ones in Somerset, producing about 140,000 tons of coal a year. Highly specialised, the total labour force may have numbered between 4000 and 5000 by 1850.<sup>67</sup>

There were many factors which divided colliers from their immediate agricultural neighbours and from the remainder of the county's inhabitants and contributed to their distinctive profile. Lead miners found that their use of the commons, where much mining was done, and the consequent poisoning of crops, animals and water, could lead to local hostilities. And although miners in some parts of the coalfield supplemented their wages with agricultural labour in the slack summer season, and many continued to help get the harvest in, wages were higher and hours shorter for the miner than for the agricultural labourer.<sup>68</sup> By the nineteenth century, when masters

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<sup>67</sup>For the number of pits: Down and Warrington, History of the Somerset Coalfield, p. 21. For production: Bulley, 'To Mendip for Coal', p. 46. For the workforce: Bulley, 'Coal Industry', p. 117. The census of 1851 lists 5,274 employed in all branches and levels of the industry.

<sup>68</sup>Bulley, 'Coal Industry', p. 125; Down and Warrington, History of the Somerset Coalfield, p. 36; R.K. Bluhm, 'The Somerset Coalfield, 1790-1820' in Bath and

supplied tools, candles, some clothes, a coal allowance and, on occasion, free housing, the differences could be substantial.<sup>69</sup>

The miners were not, however, entirely divorced from a recognisable plebeian culture. They, too, engaged in public shaming rituals, but like the clothworkers, they used collective action to realise political and economic aims. Somerset miners enhanced their reputation for solidarity by dramatic public defences of the traditional order. The Kingswood colliers tore down turnpike gates in the 1720s and 1730s and local miners led food riots in the middle of the eighteenth century that benefitted miner and agricultural labourer alike. In 1797, the entire able-bodied male population of the mining parish of Shipham

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Camerton Archaeological Society, A Second North Somerset Miscellany (Bath, 1971), p. 59. I think this evidence undermines Bulley's contention (p. 154), that there was no mixing between miners and outsiders. Harvest, as we shall see, was an important time for the exchange of gossip.

<sup>69</sup>Bulley, 'Coal Industry', pp. 129-30. The impact of the coalowner on local discipline varied greatly from pit to pit. Though landowners often supplied the bulk of the capital, the small partnership was the most common form of ownership and many landholders were content to collect royalties or take on partners, often men of relatively small means and occasionally former colliers, who then ran the business. Where landowners became active, or owned their mines outright, they could exercise at least some control over the workforce by providing housing (Chap. 2). At Newton St. Loe, an estate village which included a colliery, the Gore Langton family blocked the construction of a Methodist chapel: G.P. Davis, 'Social and Economic Change in a Somerset Village, Newton St. Loe, 1801-1871' (M.Sc. dissertation, University of Bath, 1975), p. 95.

marched to Bristol to rebuff the French invasion.<sup>70</sup> The miners, too, had a reputation for physically obstructing mechanisation in other trades.<sup>71</sup> This assertive separateness extended to manners and morals and was frequently remarked and condemned by upper class observers. John Skinner, the rector of Camerton, thought his parishioners 'were as bad as the people of Sodom and Gomorrah' and he continually complained in his diary of their drunkenness and 'comme il faut' weddings.<sup>72</sup>

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<sup>70</sup>The Kingswood colliers inhabited the Forest of Kingswood in Gloucestershire, on the Somerset border, and their frequent incursions into the county made them a familiar aspect of Somerset life in the mid-eighteenth century. See Robert W. Malcolmson, "A set of ungovernable people": the Kingswood colliers in the eighteenth century' in John Brewer and John Styles, eds., An Ungovernable People (London: Hutchinson, 1980), pp. 85-127 and Latimer, Annals, pp. 156-57. For food riots see Bulley, 'Coal Industry', pp. 133-36: the colliers 'played a large part' in riots in 1753, 1757 and 1766. For Shipham, see Gough, Mines of Mendip, p. 17.

Such activities continued into the nineteenth century. The miners of Newton St. Loe joined the Chartists at the end of the 1830s: Davis, 'Newton St. Loe', p. 271. The Nailsea glassmakers, later arrivals in the area, were not unlike the miners in several respects. See the indictment of six glassmakers for assaulting Benjamin Bowles in 1789: Q/SI 409 (Taunton, 1789).

<sup>71</sup>See the incident described in the section on Women's Work, below. The Hammonds, Skilled Labourer, p. 156, quote a Home Office informant who claimed that Mendip miners had offered to break a machine at Twerton that was displacing woolcombers. In any event, no machines were broken.

<sup>72</sup>John Skinner, Journal of a Somerset Rector; Parochial Affairs of the Parish of Camerton, 1822-1832, ed. Howard Coombs and the Rev. Arthur N. Bax (London: John Murray, 1930), p. 139. Of course, Skinner would have included the farmers and the Jarretts, the local coal magnates, in this

A distinctive communal style based on occupational homogeneity, skill and status and on the danger of their work is significant in accounting for the absence of miners and their wives from Wells. In addition, geographical remoteness, buttressed by a popular fear of the miners' savagery, left many mining parishes free of the attentions of a Church of England clergyman, and consequently of contact with such institutions as the ecclesiastical courts. It was, after all, the Methodists who were credited with bringing religion, education and 'civilisation' to the miners.<sup>73</sup> Finally, there were in mining villages fewer women in proportion to men than in virtually any other part of the county, and high male wages, early marriage followed by the birth of many children and, in the more isolated parishes, a dearth of employment opportunities for women must have placed

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characterisation. Allusions to the drunkenness, profligacy and violence of the colliers abound in the Journal. On the weddings, which were often baptisms as well, see pp. 240; 257; 270.

<sup>73</sup>Bulley, 'Coal Industry', pp. 149-52. References to the savagery of miners are rife; see Latimer, Annals, p. 219 for the conversion of the Kingswood colliers to Methodism. Davis, 'Newton St. Loe', p. 279, shows that the colliers of that parish were lax about baptising their children. Despite the fact that Newton was a closed parish, little effort was made to promote the Established church and many parishioners attended church in Corston (p. 334).

miners' wives firmly in the home.<sup>74</sup> This unique configuration would have shaped the opportunities for defamation as well as conditioning the ways in which reputations were defined and defended among miners, their wives and daughters.

By 1850, much had changed within the landscape and for the people who worked the land. The draining of the Levels and the enclosure of commons, wastes and open fields accompanied a long-term shift towards agricultural specialisation within the national economy; Somerset was being defined as a grazing and dairying region. The environmental determinants of agricultural specialisation had altered radically in the preceding 150 years as well, breaking down regional identities already under attack as communications improved. Enclosure, drainage and new agricultural techniques brought far more land into active use and the reclamation of the Levels ended the ancient and

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<sup>74</sup>Skinner makes repeated references to wifebeating in his Journal and even suggests that the power colliers exercised over their wives could lead to murder (pp. 6; 119). Drunkenness was behind much of the domestic violence, and Skinner opposed local celebrations because they ended with the drunken colliers returning home and 'beating their wives to a jelly' (pp. 14-5).

Miners in Newton St. Loe married earlier and had larger families than their neighbours, taking advantage of the need for child labour and the early peak in earnings colliers experienced: Davis, 'Newton St. Loe', pp. 20; 269. Such a demographic regime would have a major effect on defining women's roles. Miners were not, however invariably prosperous: see p. , below, on the Kingswood colliers whose wives took in spinning.

annual severance of the eastern half of the county from the western.

The human implications of these changes varied, of course, from region to region and from class to class. Conditions for the farm labourer were worsening in the eighteenth and nineteenth centuries as wages declined in relation to prices, industrial by-employments ceased to exert their pressure on agricultural wages, commons were extinguished and farms were engrossed. Employment opportunities declined as arable farming was superseded by grazing and as mechanisation--there was not a single threshing machine in the county in 1791--was introduced in the nineteenth century.<sup>75</sup> By the mid 1840s the wages of male labourers were the lowest in that part of England and were keeping up with neither the wages in the North or the Midlands, nor with prices.<sup>76</sup> Parliamentary investigators

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<sup>75</sup>Dunning, Somerset, p. 70. There were many threshing machines, especially in the west, by 1850.

<sup>76</sup>The area included Wiltshire, Dorset and Devon; male wages were 8-10s. per week (with cider) and women earned 6-10d. per day or a shilling at harvest; Francis George Heath, Peasant Life in the West of England, 4th ed. (London: Sampson Low, Marston, Searle & Rivington, 1881), pp. 51-2; VCH, 2:333. It is clear from the wage list of 1735 cited above that piece rates were already being paid alongside day rates in agriculture in the early eighteenth century, and all day rates were given in two forms--for those who brought their own provisions and those who did not. At the end of the century, Eden noted that payment by piece (which was more lucrative) was more usual for common labourers in Frome than daily wages: State of the Poor, 2:643.



found few allotment gardens in Somerset, though the bishop of Bath and Wells had instituted a scheme in 1826, and they condemned the low wages and the cramped, ill-repaired housing they visited on their tours.<sup>77</sup>

Poverty was a feature of town life, as well. In periods of prosperity, towns such as Frome had more than enough work, but when depression came, as it did in the 1790s and especially after 1820, unemployed men, women and children could be harnessed to trucks to haul coal from the Radstock works, eight miles away.<sup>78</sup> And poverty hit women with particular force, often leaving them with a choice between vagrancy and heavy labour sponsored by local overseers. As traditional by-employments became unremunerative or disappeared, and as men went off to war, women were left unable to adequately provide for themselves and their families.<sup>79</sup>

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<sup>77</sup>For Bishop Law's scheme: Dunning, Somerset, p.70 and VCH, 2:330. It reportedly spread to 250 parishes, mainly in the East, by 1850. For gardens and housing, see Heath, Peasant Life, p.53-4;26. Heath was less sanguine about the allotment schemes, and only singles out the scheme in Burrington for praise (p.121).

<sup>78</sup>Ivy, Pinchbeck, Women Workers and the Industrial Revolution 1750-1850, 3rd ed. (London: Virago, 1981), p.156 and Bluhm, 'The Somerset coalfield', p.56. For the suffering engendered by the introduction of machinery in the cloth manufacture in the depressed 1820s, see the Hammonds, Skilled Labour, p.129.

<sup>79</sup>VCH, 2:329;331. Pinchbeck, Women Workers, p.71, notes that Somerset women were sent to work in the stone quarries at 8d. a day. In the 1815 Lent Assizes, several women were punished for passing themselves off

Poverty, and the gulf between rich and poor, was never far from people's minds. An early nineteenth-century chapbook, 'The Proud Squire Reformed', tells the story of a rich squire near Chard who is taught the Christian meaning of wealth by the example of a very poor man and then determines to give the bulk of his riches to the parish poor.<sup>80</sup> William Eyre, the curate of Wedmore, wrote of the high price of bread and other provisions in a note he left in a bottle in a newly built wall of his house in 1801. '"The great scarcity of bread"', he opined, '"is likely to bring on troubles"'.<sup>81</sup> And troubles there were, from the food riots of the eighteenth century to the Captain Swing disturbances of 1830-1831.<sup>82</sup>

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under different names as wives of soldiers so they could obtain relief to return to their homes: ASSI 23/10 (Lent, 1815) Gaol Book.

<sup>80</sup>Green, 'Somerset Chap-Books', pp.63-4.

<sup>81</sup>N&O for S&D 16(1920):256.

<sup>82</sup>Wilkes, for instance, had a large West Country following and visited Bath frequently: George Rudé, Wilkes and Liberty; A Social Study of 1763 to 1774 (Oxford: Clarendon Press, 1962), p.175. Reform riots took place at Yeovil and elsewhere prior to the passage of the Reform Bill: Watson, Chronological History, p.193. Food riots, over the price of bread in the eighteenth century and the price of bread and potatoes in the nineteenth century, are documented in many places, including Ibid., pp.162-201 (for food riots from 1757 to 1846); Henry Hunt, Memoirs of Henry Hunt, Esq., Written by himself, in His Majesty's jail at Ilchester, in the county of Somerset, 3 vols. (London: T. Dolby, 1820-22), 3:323 (for the Frome riot of 1816); and N&O for S&D,

Yet popular disturbances, whether politically or economically motivated, leave no traces in the records of defamation. We can perceive social change only obliquely, in the shrinkage of the defaming classes and in the gradual abandonment of the courts. Some rose out of the defaming classes--the farmers and their families, for instance--and adopted standards of public behaviour antagonistic to verbal insult and to defamation litigation. Poverty, too, took its toll of the defaming classes by making respectability a condition of survival for some and by putting litigation beyond the reach of others. Dependence on public or private charity and membership in the ameliorative institutions promoted by the middle and upper classes encouraged new patterns of behaviour among the poor. There were 114 Friendly societies in the county in 1796 and 664 in 1855, and

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21 (1935):148 (the population of Taunton rose and set the price of wheat in 1772). The Swing disturbances of which there were fewer than ten in Somerset, are described in E.J. Hobsbawm and George Rude, Captain Swing (Harmondsworth: Penguin University Books, 1973), pp.59;63;101-2 and appendices II and III. Fear of Swing, however, was more widespread: even Sydney Smith got into the act, writing letters to the Taunton Courier to be used as handbills among the susceptible poor: Alan Bell, Sydney Smith (Oxford and New York: Oxford University Press, 1982), p.155. Resistance to the New Poor Law at North Curry and Stoke St. Gregory (in the form of a threatening letter) is recorded by Hobsbawm and Rude, loc. cit., pp.38-9;58.

where these were directed from above, chastity and decorum received their reward.<sup>83</sup> And while labourers probably did not make much use of the church courts when they traded insults, the destitution of the rural population and its exodus from the land in the 1840s and the decline of the cloth industry undoubtedly had an impact on the shopkeepers and artisans who serviced

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<sup>83</sup>Bettey, Wessex, p.96. The Burnham Society, founded by Richard Locke in 1772, was a benefit society and religious debating club open to men of the labouring and middle classes from the surrounding parishes (dues were 2d. per week plus money for refreshments). The club had abandoned religious discussion by 1796, and set its sights more firmly on sick, old age and death benefits, and loans to the distressed, but Locke remained in control. Locke himself was an agricultural improver and antiquarian and one of the richest men in Burnham where he held local offices, including overseer of the poor: Richard Locke, Supplement to Collinson's History of Somerset (Taunton: The Wessex Press, 1939), pp.16-18; 11. (This material comes from a biographical introduction by F. Madeline Ward).

Benevolent societies were a recognised feature of the cloth towns where they provided a cushion against the trade cycle: see Warner, Excursions from Bath, p.41 (Frome) and Eden, State of the Poor, 2:650 (Walcot). For the societies run by Hannah More, see Chapter 5, below. The Friendly Society of Minehead excluded those who earned less than 7s. a week. The fact, which Eden himself records, that farmers sold wheat at a reduced price to labourers who worked steadily at 6s. per week, suggests that most labourers were ineligible for membership: State of the Poor, 2:647;649. The Men's Friendly Society of Wrington withheld medical payments from those having 'The V.D.', as well as men who had been injured in fighting, cudgelling or playing unlawful games, and from prisoners, according to the 1851 rules: Miss J. Wilson, 'Wrington Friendly Society' in Wrington Village Records, p.66. At Watchet, the Friendly Society promulgated rules ten years after its foundation in 1849 fining members for, among other things, wagering, playing games, cursing, swearing and using 'obscene or provoking language': Wedlake, Watchet, pp.119-20.

Somerset's towns and villages and who would have been more likely candidates for a visit to Wells.

#### IV. Women's Work

As women were the main targets of defamation in our period, it is necessary to survey the material conditions under which they lived and which may have defined their susceptibility to sexual insult and their inclination and ability to litigate. While it may not always be easy to draw explicit connections between female occupations and use of the church courts, we can be reasonably sure that in exploring women's work in Somerset we are looking at a population that was under-identified at Wells (women were generally described by their marital status, men by their occupations) rather than one that stayed away from the courts entirely. In the section that follows we will look at both women's work and some of the determinants of women's work, such as the gender distribution of the population and changes in male employment. The agricultural and industrial revolutions, the shifting balance between agriculture and industry in the county's economy, made considerable inroads into the varieties of female employment available over time. Less visible but equally important were the consequent alterations within the family economy and in women's contribution to it. We will go on to suggest some of the themes

that will be taken up in those later chapters where we look more closely at the impact women's work, and the authority they derived from it, had on relations between men and women and how these relations, in turn, might affect the practise and prosecution of defamation.

The sex ratio, the balance between males and females, played an important role in determining the position of women. The availability of marriage partners, the likelihood of having a male relative with whom one could shelter or upon whose protection one could rely, the need to work or to migrate could be affected by a local imbalance in the numbers of men and women. Somerset had a very high sex ratio at the beginning of the nineteenth century, with 116 women for every 100 men, a figure exceeded only in Devon and Middlesex. By 1851 the national ratio had dropped from 109 to 104. Somerset, with just over 110 women for every 100 men, was fourth behind London, Gloucestershire and Devon in that year. Because these sex ratios reflect differing survival rates for men and women, from the age of twenty onward the sex ratio for all ages is exceeded in each age group. In the prime marrying years, between the ages of twenty and forty, there were more than 122 women for every 100 men in 1851.<sup>84</sup> Futhermore, variations in the sex ratio

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<sup>84</sup>The West Country as a whole tended to have high sex ratios: in 1801, Cornwall had 109, Devon 118,

from parish to parish mirrored the diverse nature of employment opportunities in the county. 'Virtually all towns,' notes Corfield of the eighteenth century, 'contained a majority of women, reflecting the relatively greater range of job opportunities for them in the towns as compared with the countryside, as well as female longevity'.<sup>85</sup> In the Bruton-Pitcombe area, the introduction of the silk industry in the mid-eighteenth century unbalanced the sex ratio by providing work for women.<sup>86</sup> Only in coal parishes did men consistently equal or outnumber women.

Such a disparity in the numbers of men and women in the adult years, and particularly in the prime marrying years, suggests several points. First, it was harder for Somerset women to find mates, a problem that reached enormous proportions in Bath where, among the resident population, women over the age of

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Dorset 115 and Gloucestershire 114 women per 100 men. (Cumberland was the other preponderantly female county, with 116 women per 100 men). In 1851, Cornwall had 107, Devon 110, Dorset 106 and Gloucestershire 111 women for each 100 men. The pattern by age for Somerset is typical, with equal numbers of males and female until the age of twenty, followed by rising and falling (but always higher) ratios in each succeeding twenty-year grouping and an enormous surplus of women over the age of eighty.

<sup>85</sup>Corfield, Towns. p.99.

<sup>86</sup>McCallum, 'Bruton and Pitcombe', p.84.

twenty outnumbered men by almost two to one in 1851.<sup>87</sup> Second, the number of women who could not rely on the earnings of a husband or father to support them was probably duplicated only in places like London, where employment opportunities were far greater than in Somerset. Though the occupational returns for 1851 suggest that there was a fairly equal division between agricultural labour as the main male employment and domestic service as the largest occupational grouping among women in the country, there was some direct competition between men and women for jobs. Employers in the declining cloth industry were eager to hire cheap female labour, and mechanisation in both the cloth manufacture and in agriculture could favour women. At the end of the eighteenth century, perhaps even more than in 1851, there were large numbers of unmarried women in Somerset who owed their survival to some form of waged work.

Yet plebeian spinsters and widows did not appear nearly as often as wives as litigants in the local church courts, and their poverty and their unique problems in procuring the means of survival partly explain their absence.<sup>88</sup> The dearth of opportunities for waged

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<sup>87</sup>Neale, Bath, pp.275-76. Of course, many of these women were servants and may have returned home to marry.

<sup>88</sup>This entire section on women's work relies heavily on Pinchbeck, Women Workers. Pinchbeck



labour is brought home in the wage list for 1735 which includes only two rates specifically for women. 'Maid Servants' were to earn £2 10s. 0d. by the year and 'Women at Corn Harvest' could earn 10d. or 6d. a day, depending on whether they supplied their own provisions.<sup>89</sup> Domestic service was the main employment open to women in Somerset, as elsewhere: 21,261 women were in domestic service in the county in 1851. Servants were predominantly single and unlikely, because of cost, the conditions of employment and their place within a larger household with its own concern with reputation, to litigate at Wells. Some women, usually unencumbered by children, became servants in husbandry, while others were tenants of cottages with common rights or rented or owned plots of land that provided a subsistence that might be supplemented by dairying. Worst off, perhaps, were the singlewomen forced to survive on the wages of such by-employments as spinning, intended primarily to supplement a family wage. Enclosure and the decline of

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(pp.72-3;80) notes that singlewomen were less likely to be 'demoralised' by the Poor Law because assistance, if any, was so minimal that most work was more remunerative. For the particular problems of singlewomen in this period, see pp.16-19;22-23;45;145-46. Other than domestic service, most of the employment discussed in this section would have been equally open to single or married women.

<sup>89</sup>Q/SR (Wells, 1735). Piece rates are not listed by sex, as are day rates.

the cloth industry resulted in the destitution of single-women and the lack of employment for them in the countryside accounts for their disproportionate presence in the towns of Somerset, where the range of opportunities, from shopkeeping to prostitution and, later, factory work were far greater.

Among married women, the choice between work in the home (in handicrafts, trade or agriculture) and waged by-employments was dictated by their husbands' occupation, the region they lived in and the point in their lives at which they sought work. In agriculture, women's work was curtailed both in scale and variety in our period. Positions of responsibility disappeared as farmers ceased to board servants and their wives and daughters joined the leisured classes; dairying was increasingly taken over by hired dairymen; and tiny agricultural establishments dependent on the use of the commons or the survival of a local domestic industry were obliterated by enclosure and the shrinkage of the cloth manufacture.<sup>90</sup> This could lead, in the case of the

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<sup>90</sup>On farmers' wives and the alterations in the demand for labour that contributed to the abandonment of boarding servants, see Pinchbeck, Women Workers, pp.28-29;35;37-39. She is quite frank about the drudgery involved in provisioning and managing these large households, especially at harvest (p.38). On tenants' and cottagers' wives, see ibid., pp.23-24;28-29. On dairying, ibid., pp.41-42; Bettey, Wessex, p.17, and Billingsley, General View of Agriculture, pp.205-6. Billingsley wanted to encourage dairying to keep

wives of tenants, cottagers and labourers, to their reduction to complete economic dependence upon their husbands, husbands who were frequently unable to earn enough to support a family.<sup>91</sup> For others, dependence and poverty were mitigated by the availability of seasonal or casual labour or even an allotment; proximity to a specialised agricultural employment (the women and children of Keynsham, for instance, earned a 'very high wage' at tending the woad grown for the cloth manufacture); or, particularly after 1840, agricultural day labour. Women continued to help with haying and harvest (in 1800 the Bath and West of England Society awarded prizes to women for reaping), to weed, manure, pick stones, glean and assist with the milking.<sup>92</sup> The spread of labour-intensive turnip and potato cultivation and the introduction of threshing machines encouraged farmers to hire women at low wages as day labourers, and by the 1840s, parliamentary investigators noted the extensive use of female labour in the county, though

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farmwomen employed about the farm (p.252) and he notes that milkers were paid 3s. a week and dairywomen 4s.6d. a week (p.251).

<sup>91</sup>Pinchbeck, Women Workers, pp.28-29.

<sup>92</sup>For allotments and prizes see ibid., p.99 and p.57. For woad, used in cloth dying, see Billingsley, General View of Agriculture, pp.113-14.

not in winter.<sup>93</sup> By 1851, 4% of all the female farm labourers in Great Britain could be found in Somerset, where 7,034 women were classed as agricultural day labourers.<sup>94</sup>

As women's productive work in agriculture contracted, their role in distributing agricultural produce also declined. Though women continued to sell at fairs and markets, alone or alongside their husbands, their opportunities were disappearing. William Marshall found farmers' wives and daughters retailing agricultural products at Taunton market in the 1790s; 'an unusual, but a very political way of bringing these articles, at once, to the consumer; without the intervention of mere dealers', and his surprise indicates the extent to which the encroachment of wholesaling had diminished women's

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<sup>93</sup>Heath, Peasant Life, pp.39-42;46. Heath was particularly disturbed by the effect female wage work had on domestic life, but the celebration of the woman in the home was probably irrelevant to labourers, who could never afford an unemployed wife. Pinchbeck, Women Workers, pp.57;67, suggests that the French wars, by removing male agricultural labour, were important in encouraging female day labour, but the postwar depression and the Speenhamland family allowance may have caused a decline in female wage work that ended with the introduction of the New Poor Law.

Wages for women were between 6d. and 10d. a day, according to season, and higher at harvest: about half a man's wages: ibid., p.95.

<sup>94</sup>Census of 1851. (The county's population accounted for 2% of the population of Great Britain and the Islands).

roles in agricultural markets. Dairy products, too, were subject to new methods of distribution and retailing that eliminated local markets staffed by women.<sup>95</sup>

Just as new forms of agricultural employment began to emerge towards the end of our period, the manufacturing employments that arose after the period of contraction in the late eighteenth century were quite different from what had come before.<sup>96</sup> The cloth manufacture, both woollen and worsted, employed large numbers of women in the eighteenth century, usually as domestic wage earners in such low-paid, low-skilled areas as spinning.<sup>97</sup> Spinning occupied women in villages for thirty miles around the cloth towns. Most spun wool was put out by the clothiers, but a few women

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<sup>95</sup>Marshall, West of England, 2:190 and Pinchbeck, Women Workers, p.34.

<sup>96</sup>The impact of the industrial revolution on women's work and economic position, by divorcing home and workplace, is well canvassed in Pinchbeck, Women Workers and elsewhere. Here I am concentrating on specific problems of female industrial employment in Somerset.

<sup>97</sup>This was not, of course, exclusively true. The parish of Watchet listed two women clothiers in a directory of 1794 (but none in 1840): Wedlake, History of Watchet, pp.106-7. Thomas Fox's wife had large responsibilities within his huge textile empire into the nineteenth century, and he also allowed his foreman's wife to instruct the workers at another factory on the use of the spinning jenny: Fox, Quaker Homespun, pp.37;58. Fox was a Quaker, and his business practises, including the participation of his wife, were part of a Quaker tradition.

continued to buy wool which they spun and sold directly to weavers.<sup>98</sup> Hand-spinning came under attack in two ways in the late eighteenth century as the cloth manufacture declined and as machinery was introduced. Bad times meant that wages tumbled and the industry shrank back towards the cloth towns; mechanisation, beginning in the late 1770s, eradicated hand-spinning by the turn of the century and brought it into workshops under the direct supervision of clothiers. Thomas Fox, the west Somerset worsted magnate, looked for sites with women and girls 'on easy terms and near their habitations' when introducing spinning jennies in the 1780s.<sup>99</sup>

The weavers' hunger for yarn and the gradual absorption of women into the mechanised branches of the manufacture eased the transition for some. Women were earning 8d. a day in the cloth factories of Frome in the 1790s, picking wool, burling or dressing cloth and attending machines.<sup>100</sup> Villages where mills were sited could fare very differently from some of the older cloth

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<sup>98</sup>Ponting, West of England Cloth Industry, pp.96-97; Pinchbeck, Women Workers, p.136.

<sup>99</sup>For mechanisation, see the Hammonds, Skilled Labour, pp.119-21; for the poverty and unemployment of dispersed outworkers, see Pinchbeck, Women Workers, p.156; for declining wages and seasonal fluctuations in the eighteenth century, see ibid., pp.140-42. See also Fox, Quaker Homespun, p.51.

<sup>100</sup>Ponting, West of England Cloth Industry, p.99. On Frome: Eden, State of the Poor, 2:643.

and spinning centres. Thomas Joyce, a manufacturer at Freshford, was able to report in 1803 that '"All the Work People in his Neighbourhood, from the Age of Seven Years to Seventy, both Male and Female, are employed"'.<sup>101</sup>

In the 1830s the maximum average wages in Somerset wool mills were 8s. 1d. per week and in silk mills, 6s. per week, rates that compared very favourably with local agricultural wages, though they were less than those paid in the cotton factories of the North. The family wage, however, was more significant: at the large Twerton manufactory, it amounted to £1 1s. 10d. per week in 1837.<sup>102</sup>

The loss of spinning had the most profound and widespread effect on the family economies of the poor throughout Somerset, but it was not the only by-employment to disappear between 1750 and 1850. Lacemaking, which employed many women and children as outworkers, was gradually moving out of Somerset in the eighteenth

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<sup>101</sup>Quoted in Pinchbeck, Women Workers, p.155.

<sup>102</sup>Ibid., p.193. The availability of factory work was crucial to single women who, outside of domestic service, had difficulty supporting themselves. For Twerton, see Pierce Egan, Walks through Bath, Describing Every Thing Worthy of Interest Connected with the Public Buildings, the Rooms, Crescents, Theatre, Concerts, Baths, its Literature, &c.... (Bath: Meyler and Son, 1819), p.268. Egan also noted that the manufacturer had put up 'neat and comfortable' housing for the workers. This was part of a larger regime intended to promote factory discipline: Wroughton, 'Bath and its Workers', p.14. For family wage, see ibid., p.13.

century and died out in the postwar period under the combined pressure of competition, mechanisation and falling demand. Hand-knitting, partly for the London market, survived in such places as Shepton Mallet, Wells and Glastonbury even after the introduction of frame-knitting, but became increasingly unremunerative after 1800.<sup>103</sup>

Female and family survival often depended on proximity to a still-prosperous cloth centre, a mill or factory, a new industry or an old industry in which employers used mechanisation and low-paid female labour to undercut male wages. Glovemaking was the leading new employment for women in the county in this period. Yeovil, a glovemaking centre in Defoe's time, became increasingly important in the late eighteenth century, dispersing work for miles around. While men tanned and cut the leather, the great majority of workers were women who worked at home, sewing gloves. It was estimated that 20,000 people worked at glovemaking in the 1820s, but a decline in trade after 1826 when import restrictions were lifted and fashion dictated a shift away from leather gloves brought considerable distress to Yeovil. Poor

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<sup>103</sup>Other female by-employments of the cloth manufacture, such as winding and warping, were also mechanised in this period: Pinchbeck, Women Workers, pp.171-72. Lacemaking was also susceptible to large fluctuations dictated by changes in fashion (pp.203-8). In 1851, there were only 417 women employed in lacemaking in the county (Census). For handkitting, see Women Workers, pp.227-29.



rates nearly doubled between 1825 and 1832 and recovery did not come until the 1840s when about five or six thousand women and children in the area were employed at somewhat lower wages than previously.<sup>104</sup> The new silk mills in Taunton and elsewhere were staffed overwhelmingly by women, with almost five times as many women as men employed in the manufacture in 1851 (Census of 1851). Marshall noted that the sail-cloth and cordage manufacture gave 'employment to the female villagers of the neighbourhood' of Crewkerne and Chard (though in fact, by the 1850s, this was the only sector of the cloth manufacture in which men far outnumbered women), and women were moving into weaving in the woollen and worsted sectors as apprenticeship laws went unenforced, easier yarns were introduced and the Napoleonic wars and the mechanisation of spinning effected changes in the labour supply and in demand.<sup>105</sup> The reprieve such a move

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<sup>104</sup>Defoe, Tour, 1:218; Pinchbeck, Women Workers, pp.222-26 and Taylor, Eve and the New Jerusalem, p.91. 8050 women (30% of the female glovers in the nation) and 1156 men were identified in the county in the Census of 1851. In 1834, when the trade was just beginning to recover from a drastic decline, the glovemakers in Yeovil and Worcester had heeded the Owenite call and were producing their goods in cooperative workshops. When they organised into unions affiliated with the Consolidated Union they did so on a single-sex basis, evidence — along with exclusionism — Taylor feels, that men had already come to see female labour as a threat.

<sup>105</sup>For sailcloth, etc.,: Marshall, West of England, 2:145 and Census of 1851. For weaving: Pinchbeck, Women Workers, pp.163-64 and the Hammonds,

entailed, however, was shortlived, for handloom weaving was becoming an increasingly depressed trade in the nineteenth century and employers were quick to use women, who they consistently paid less than they did men, to drive down wages. Thomas Fox preferred steady female labour, and child labour, to a potentially contentious male workforce; his fellow manufacturer, Thomas Joyce, employed as many women as men in his factory in 1803.<sup>106</sup> As the cloth manufacture shrank it ceased to employ skilled men at all, relying instead on women, children and machines. By 1851, the wool manufacture in Somerset employed 1737 women and 1841 men, many of them, no doubt, boys.<sup>107</sup>

Contemporaries recognised the importance of female labour and particularly its contribution to the family economy of the poor. Thus, the mechanisation of spinning was resisted successfully at first because of fears that

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Skilled Labourer, p.130. According to Hammonds, women weavers were found primarily in the serge district, where wives and daughters of agricultural labourers and mechanics took to the loom.

<sup>106</sup>Pinchbeck, Women Workers, pp.177-78. Pinchbeck considered the West of England the only worsted area where women were paid less than men for piecework. Fox, Quaker Homespun, p.80. Thomas Joyce is quoted in Women Workers, p.155.

<sup>107</sup>The Hammonds' contention that all male clothworkers were displaced by machines or children in the early nineteenth century probably overlooks the role of female labour, but it certainly holds true for the most skilled workers: Skilled Labourer, pp.134-49.

the widespread unemployment of female spinners would send the poor rates soaring. In 1790, the Kingswood colliers joined their wives in destroying spinning machines at Keynsham in an effort to protect female employment.<sup>108</sup> It was claimed, rather inaccurately, that Somerset was quiet during the Swing riots because agricultural day labourers were supported by their glovemaking wives.<sup>109</sup> Yet male and female labour were never seen as interchangeable and men continued to fight to restrict female labour within their trades.

The shifts within the family economy and the realignment of domestic roles created by the rise and fall of agricultural and industrial employments, and by the increasing separation of workplace and home, had a disruptive effect on relations between men and women which was sometimes exposed in defamatory incidents. Though we have been noting local and chronological

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<sup>108</sup>Mann, Cloth Industry, p.125. Hammonds, Skilled Labour, p.121 (also quoted by Mann, p.128). Women were never employed in the pits in Somerset, so when miners' wives needed wage work they had to look elsewhere: Bulley, 'Coal Industry', p.121. Though the woollen manufacture had departed from Keynsham by this time, 'many of the poor are still employed in spinning for the Bradford, Trowbridge, and Shepton clothiers': Collinson, Somerset, 2:400.

<sup>109</sup>Pinchbeck, Women Workers, p.238, records the claim. Somerset was not entirely quiet and gloving, concentrated around Yeovil, was in the throes of depression at the time. The claim is testimony, however, to the fact that glovemaking was seen as an unusually well-paid female occupation: VCH, 2:334.

variations, the experience of much of the population of Somerset between 1730 and 1850 can be roughly divided into two overlapping phases: the emergence of the single-wage (and frequently impoverished) family as the scope of complementary female employment contracted in agriculture and industry; and then the creation of new female wage-earning activities, either through the growth of newer industries, such as glovemaking, or through mechanisation or competition within traditional male sectors. The first phase may have fostered in men an expectation of female dependence and submission--and a simultaneous feeling of inadequacy as the sole support of the family--that was threatened by any assertion of authority on the part of a woman, whether a wife or not. The growth of non-domestic employment in the second phase placed women in vulnerable positions outside the home and created opportunities for direct economic competition between men and women that reverberated in the realm of gender relations. Not all women were deprived of a material base in this period: widows carried on businesses, a few farmed and wives continued to work alongside husbands, particularly in the service trades which still operated out of the home.<sup>110</sup> But women

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<sup>110</sup>Census of 1851, there were 8010 male farmers and 643 women farmers. A directory of 1794 lists nineteen principal inhabitants of Watchet, including five women: two clothiers, a miller, a coal merchant and a

were farming or selling groceries or announcing closing time in a less certain climate, and the misogyny of their male clients and customers--exacerbated by the precariousness of economic and domestic relations in this transitional period--might find expression in the defamatory phrases which we will consider in the chapters that follow.

## V. Religion and the Church

The diocese of Bath and Wells, whose organisation will be discussed in greater detail in the following chapter, contained over 400 livings. The bishopric was a wealthy one, traditionally bestowed on older men who, in the eighteenth and nineteenth centuries, set very different tones for the church.<sup>111</sup> The ecclesiastically distinguished bishops of the early eighteenth century were followed by a series of prelates best remembered for

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linen-draper. The County Gazette in 1840 lists only two women of commercial significance in Watchet, a lodging housekeeper and a merchant (although another list of the same years shows women holding three of the town's six inns): Wedlake, Watchet, pp.106-8. Watchet may have been unusually receptive to female entrepreneurship. It was a port and until sometime into the nineteenth century does not seem to have had any resident clergy or gentry.

<sup>111</sup>W. St. J. Kemm, 'A Study of the Church of England in the Diocese of Bath and Wells, 1790-1840' (M.A. dissertation, University of Birmingham, 1965), p.35. (Bath and Wells was about the eighth most valuable see.) This thesis is indispensable to the study of the diocese in this period.

the fortunes they amassed and the relatives they employed; even George Henry Law, the most eminent bishop of this era, and one intent on reform, did not overlook his kin.<sup>112</sup> Somerset clerymen, however, were not unusually well provided for. In the seventeenth century, the typical clergyman was a native of the West Country, the son of a clergyman, university educated and held a living worth just under £60 per annum; towards the end of our period, the average value of benefices remained low, largely because of the absence of very wealthy benefices.<sup>113</sup>

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<sup>112</sup>For Bishop Hooper, who opposed nepotism and promoted a better-educated clergy, see William M. Marshall, George Hooper 1640-1727. Bishop of Bath and Wells (Milborne Port, Sherborne: Dorset Publishing Co., 1976). The stories about Bishops Wynne, Moss, Willes and Beadon are legion. Crossing a bishop was not to be recommended: Latimer, Annals, p.468, claims that a Somerset curate who published a letter in a Bristol paper in 1786 urging Bishop Moss to correct abuses in the diocese lost his curacy as a result. Latimer, like Henry Hunt (see Chapter 9), revelled in stories of clerical wrongdoing and includes many cases of pluralism from eighteenth-century Somerset in his Annals (pp.468;519).

<sup>113</sup>For the seventeenth century, see Margaret Frances Stieg, 'The Parochial Clergy in the Diocese of Bath and Wells, 1625-1685' (Ph.D. dissertation, University of California at Berkeley, 1970), pp.24;27. Steig looks at clergymen beginning or ending their incumbencies between 1625 and 1685. For the later period, see Kemm, 'Church of England', p.38. Returns to a questionnaire sent to every parish clergyman in the county in the year after Queen Anne's Bounty was established reveal many very low incomes, often below £50, the level at which one became eligible for the Bounty: R.W. Dunning, 'Some Somerset Parishes in 1705', Somerset Archaeology and Natural History 112(1968):72. W.H. Thornton claimed that when he came to the area near

Whatever the resources of the Established Church, Somerset was, at the beginning of our period, one of the most Nonconformist counties, and one of the least recusant.<sup>114</sup> John Wesley visited the county regularly throughout his life and made Bath, as did many other religious reformers, his special target. And Somerset became, thanks to Hannah More's residence in Wrington, a focus of the Evangelical movement in the late eighteenth century. There were also a number of lesser religious luminaries who visited or resided in the county, including Sydney Smith and Samuel Taylor Coleridge. Smith, the rector of Combe Florey from 1829 to 1845, actively supported the Reform Bill in West Somerset and was remembered locally for the illustrious visitors who stayed at his parsonage and for his practical jokes. Coleridge lived at Clevedon and then at Nether Stowey in the 1790s, within the orbit of the radical Thomas Poole, and served as an occasional preacher for the Unitarians.<sup>115</sup>

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Exmoor in the late 1840s as a stipendiary curate, few of the local rectors could afford curates: Reminiscences and Reflections of an Old West-Country Clergyman, 2nd series (Torquay: Andrew Iredale, 1899), p.23.

<sup>114</sup>Keith M. Beck, 'Recusancy and Nonconformity in Devon and Somerset, 1660-1714' (M.A. dissertation, University of Bristol, 1961), p. 215.

<sup>115</sup>For Sydney Smith, see Alan Bell's excellent autobiography of the same name. The best source on Coleridge is Mrs. Henry Sandford, Thomas Poole and his

Little is known about the state of the church or of the clergy in eighteenth-century Somerset, though the church court records themselves provide the sporadic scandalous anecdote as well as documenting the endless struggle between parson and parishioners over tithes.<sup>116</sup> Pluralism, nonresidence and the erratic

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Friends, 2 vols. (London: Macmillan and Co., 1888); see also Latimer, Annals, pp.508-513. Coleridge's earliest years in Bristol and Somerset were spent in elaborating a utopian scheme known as Pantisocracy: Thomas Poole, 1:96-100. While it is unlikely that Pantisocracy had much of a life beyond Coleridge's circle (see, however, the story of George Burnett, the son of a Somerset farmer, 1:207-9), Somerset hosted a more potent utopian doctrine in the years that followed in the shape of Owenism, which was particularly strong among the glovers of Yeovil. The impact of Owenism on local plebeian attitudes towards sexuality and honour would be well worth knowing: Taylor, Eve and the New Jerusalem, p.91.

Poole, a tanner in a large way of business, was instrumental in bringing many things to the neighbourhood of Nether Stowey, including a Sunday school and a book society. Wollstonecraft's Vindication of the Rights of Woman was one of the first books he ordered, in 1793: Thomas Poole, 1:27-28;44-45.

<sup>116</sup>William Hunt, The Somerset Diocese, Bath and Wells (London: Society for Promoting Christian Knowledge, 1885), pp.229-30, retails most of the platitudes about the eighteenth century - the sharp economic division between high and low clergy, the unattractiveness of the clerical life to the sons of the upper classes, widespread nonresidence and neglect - but does not offer local evidence. This is an important area which awaits study. (For the beginning of the century, see the evidence of absenteeism and disputes over tithes and residences elicited by the questionnaire of 1705: Dunning, 'Parishes in 1705', p.72-73).

What would be of greater interest would be to discover what the less distinguished clergymen said in Somerset pulpits in this period. Chance references are not entirely illuminating: Parson Woodforde went to hear a sermon in Castle Cary 'concerning Private Interest giving way to Publick Good in regard to our having an



behaviour of individual clergymen deprived many parishes of the presence of a minister or even the chance to worship regularly or bury their dead close to home. It was reported that the people of Nailsea held burials at Chew Stoke because the incumbent appeared only once a year, to collect his tithe.<sup>117</sup> The rector of Kingsdon became so notorious for frequenting alehouses, drinking and stripping to his shirt to challenge adversaries that he was called before the bishop in 1741.<sup>118</sup> Holcombe

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Water Engine to prevent Fire spreading' (James Woodforde, The Diary of a Country Parson, 5 vols., ed. John Beresford (London: Humphrey Milford, OUP, 1924), 1(1758-81): 21. Sydney Smith, according to an American visitor, preached one Sunday on the parable of the publican and the pharisee (Bell, Sydney Smith, p.200). Skinner records the subjects of his sermons from time to time and used the pulpit to comment on the administration of local affairs as well as to preach on adultery, 'the now too prevalent crime' (Skinner, Journal, p.237). Significantly, Sydney Smith was full of self-congratulation when he dared to preach on the same subject before a fashionable audience at Edinburgh around 1800 (Sydney Smith, p.28). Of course, the penances required for sexual offences stipulated that the minister deliver a homily or sermon on the crime in question during the service.

Bell includes a very good description of Sydney Smith's life as a country parson at Foston in Yorkshire in the early nineteenth century (when he arrived in Somerset he had received enough preferment to be able to abandon much of the drudgery of a rural living, including continuous residence). Smith himself once suggested that if he were offered a new living "my examination...ought to be in Burn's Justice and the Farmer's Calendar, if respect were to be had to that kind of life which my situation at Foston has compelled me to lead", Chapter 3 and p.107.

<sup>117</sup>Latimer, Annals, p.468. This was in the 1780s.

<sup>118</sup>D/D/Ca 420[1741]. The Rev. Edward Mervin

lost the services of their alcoholic parson after he became completely unhinged by the sight of a woman being burnt at the stake in 1753. In his infrequent appearances in the pulpit thereafter, the Rev. Mr. Rake took to incorporating abusive references to everyone from the Government and the bishop to the parish clerk and the local notables in his sermons. On one memorable occasion he denounced the widow of a local magistrate as a 'Scoundrel Bitch' and assured her that her husband was in hell and 'she would not be long after him'.<sup>119</sup>

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confessed and agreed to abstain from alehouses, excessive drinking and all his other 'enormities'. See also the admonitions of the Rev. John Westcott of Hatch Beauchamp, D/D/C (1756) and of the Rev. Percival Potts of Wellow D/D/Ca 420(1741). Sir Thomas Dyke Acland prosecuted the curate of Luccombe, Absalom Hurley, ex officio for drunkenness and 'frequently uttering execrable and horrible curses and oaths and very prophane and Lewd Discourse'. Among the evidence considered by the clerical commission investigating the charge was a libel written by Hurley following a quarrel with Samuel Sydenham and intended to 'defame abuse and expose... Samuel Sydenham his wife family and Relations Friends and Acquaintance with great Obscenity and in Lewd and Scurrilous Language'. Sir Thomas won his cause and Hurley was excommunicated for failing to pay costs of £33: D/D/Ca 425(1753).

<sup>119</sup>Susannah Bruford was burnt at the stake at Cure Green, near Wells, in 1753, for murdering her husband (petty treason): Watson, Chronological History, p.163. This was probably the incident Rake witnessed: Salmon v. Rake, D/D/Ca 425(1754) and D/D/C(1754). Rake was no leveller and equally abused the poor who sought parish relief.

The Rev. George Knyfton, one of the few ministers who had problems with the ecclesiastical court in the eighteenth century for fathering a bastard, was also fined at Quarter Sessions for assaulting George Attiwill in the churchyard: Q/SI 385 (Bridgewater, 1765); Q/SR 333 (Taunton, 1765). Knyfton, as holder of the benefice

It is clear that there was plenty of room for improvement, and it came in the late eighteenth and early nineteenth centuries when a concerted attack, spurred on by the Evangelicals and later orchestrated by the activist Bishop Law and aided by legislation was made on pluralism, nonresidency and the inadequacy of church facilities and services.<sup>120</sup> In 1791, three-fifths of the diocese's churches were served by stipendiary curates, though the degree of nonresidence varied considerably from deanery to deanery. Of the 180 parishes personally served by the incumbent at this time, probably only two-thirds could claim a resident clergyman.<sup>121</sup> The

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of Timberscombe, a peculiar, was not subject to episcopal jurisdiction and the full extent of his misdoings may not be known: Kemm, 'Church of England', p.152. Quaife thinks the Somerset clergy were some of the biggest lechers and bastard-makers in the country: Wanton Wenches, pp.183-85. Their low moral profile in our period probably reflects the declining interest the Church took in this aspect of discipline as well as a more settled political and religious climate. Clergymen were convenient scapegoats in the seventeenth century and could be removed from their cures by parishioners who claimed they were immoral.

<sup>120</sup>Kemm has a good chapter on the Evangelicals who, as ministers, were spread around the diocese and included the Dean of Wells between 1812 and 1831: 'Church of England', Chapter 6. The literature on Hannah More is extensive and is noted in Chapter 5, below.

<sup>121</sup>Two hundred and sixty-one out of 421 parishes were served by curates, but Axbridge deanery could claim an 84% residency rate while Bedminster deanery had the lowest rate of residency at 39.2%. The Mores, Kemm claims, took a hard line on nonresidency because of conditions in their neighbourhood, Bedminster deanery. In 1814, at least ninety-one beneficed clergymen did not

drunken Mr. Rake of Holcombe failed to appoint curates during his long absences and alcoholic lapses, and parishioners claimed that frequently the only minister available was 'Christopher Hobson a cleryman out of his mind' who would appear at the church door and beg to preach.<sup>122</sup> By 1837, Bishop Law's campaign against nonresidence was showing results, with 252 clergymen resident and another forty-five serving their cures while remaining nonresident. Only one-third of the parishes were served by stipendiary curates.<sup>123</sup> Increased residency by incumbents was accompanied by a spate of parsonage repairing and building and by improvements in the lot of the curates.<sup>124</sup> Pluralism among incumbents

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reside in the county, while only forty-nine were officially nonresident for ill-health or while serving outside the diocese in 1837: 'Church of England', pp.6-8;155-63.

<sup>122</sup>Salmon v. Rake, D/D/Ca 425(1754) and D/D/C (1754).

<sup>123</sup>Kemm, 'Church of England', p.9. Bishop Beadon had issued two monitions to reside (p.14). Bishop Law allowed nonresidence if there was no suitable parsonage or the living was worth less than £200 annually (p.19).

<sup>124</sup>For curates, see *ibid.*, pp.41,49. Just under 40% of curates were resident in 1810 and almost 65% were resident in 1833. For glebe houses, see pp.171-175. It is not clear what sort of improvement was made in the nineteenth century, because there is no information for 151 parishes in 1814, when 180 parishes had glebe houses suitable for a clergyman to reside in, thirty-eight had unfit houses, forty-seven had none and seven houses were under repair. In 1837, 289 had suitable houses, thirty-seven houses were unfit, fifty-one parishes had no house,

and curates also declined as the value of livings was improved by Queen Anne's Bounty and as parliamentary statutes in 1836 and 1838 put strict limits on the conditions for holding two livings.<sup>125</sup>

The increase in Somerset's population, particularly in the towns and rapidly growing mining parishes, posed a serious threat to the Church's ability to serve its flock. Walcot, which had grown tremendously in the preceding half century, supported its parish minister in the 1790s by raising voluntary contributions 'which, it is said, amount to about £1000 a year'. By 1831, forty-six places could not accommodate one-third of the population, even though church building societies had been founded in the diocese as early as 1810.<sup>126</sup>

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four were under repair and twenty-one parishes did not report. (About half of the uninhabitable glebe houses in 1814 remained so in 1837.)

<sup>125</sup>The First Ecclesiastical Commission of 1831 showed that livings in the county had greatly improved over the past two decades: *ibid.*, p.19. For pluralism, see pp.147-170. The statutes-- which forbade holding two livings unless they were fewer than ten miles apart and were worth less than £1000 together (p.21)--were not retroactive, so a number of men continued to hold multiple livings, including sixty-five who held two benefices in 1837. However, the breathtaking pluralists, such as John Jeremy, who held five benefices and one curacy in 1791, were on the decline and the ministers who held a single benefice and the curates who served a single parish were increasing.

<sup>126</sup>Eden, *State of the Poor*, 2:650 (Walcot). Kemm, 'Church of England', pp.65-75;183. Of the forty-six, only five were parishes with less than 500 inhabitants.

In 1851, according to the religious census, the Church of England could accommodate only 41% of the county's population in its sittings. Not only were there not enough seats, but free sittings were often scarce or nonexistent, thus discouraging the poor from attending church. At Newton St. Loe, a closed parish subject to the Gore Langton family, there were no free sittings prior to 1857 and the poor generally attended divine service in neighbouring Corston. A Diocesan Curates Fund began providing assistant curates to the larger parishes in 1838 and this, along with Bishop Law's campaign for two services each Sunday, with a sermon at each, greatly increased the number of Anglican services in the diocese. In 1837, fourteen parishes held services three times a day, 248 regularly held two services and none offered less than one service each Sunday. Efforts were also made to draw people, young and old, into the Church through its educational activities.<sup>127</sup>

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<sup>127</sup>For pews, see Kemm, 'Church of England', pp.75-6. Long Ashton, St. James, Taunton and St. Michael, Bath had no free sittings. Newton church had room for the poor but none of its 350 seats were free. Corston parish church had 200 free sittings out of a total of 260 and Corston chapel, which their neighbours also attended, had 140 free sittings out of 210: Davis, 'Newton St. Loe', p.334. A new aisle with free sittings was built at Newton in 1857 (p.311). For curates and services, see 'Church of England', pp.85;92-7;184-88. Bishop Law also wanted monthly communion, but quarterly communion remained traditional outside the towns. In 1814, only one parish held three services, seventy-nine held two and 245 held one. Seventeen parishes, mostly

Despite these improvements in the quantity and quality of Anglican ministration, attendance remained problematic and reflected local variations in facilities, traditions and coercive powers. In 1816, Twerton, a cloth-manufacturing centre near Bath, sent around a Brief to collect money to rebuild the parish church because the large parish 'being for the most part Tenants at Rack Rents and Labourers, and greatly burthened with manufacturing poor' could not raise sufficient funds locally.<sup>128</sup> For those who saw the Church mainly as an institution for marking the extraordinary events of life, the policies of the Church or of an individual official might cause disaffection and a decline in attendance: at Coleford, many preferred the Wesleyan Meeting House for baptism because parents could stand as godparents to their own children.<sup>129</sup> In other parishes it is difficult to judge whether traditional religious practises were in decline or were being discouraged among the poor by church officials. At Chew Magna, in 1776, the churchwardens took over the churching pew, presumably to rent. And the banishment of singers and musicians

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chapels of ease, had as few as one service per month. Weekday services were largely confined to the towns (p.100). Bishop Law also encouraged evening lectures for adults.

<sup>128</sup>N&Q for S&D, 5(1897):128-29.

<sup>129</sup>Kemm, 'Church of England', p.103.

from the gallery could unsettle entire flocks. The singers at Camerton Church defected en masse when the Methodists obligingly enlarged their gallery.<sup>130</sup>

While an Evangelical preacher such as the Dean of Wells might attract crowds of over 2000 for his evening sermons at St. Cuthbert's church, and others made a point of ministering to the poor, some clergymen alienated parishioners through neglect or disputes over tithes and fees.<sup>131</sup> Residents of Holcombe admitted that they had

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<sup>130</sup>On churching, see Frederick A. Wood, Collections for a Parochial History of Chew Magna (Bristol: Somerset Archaeological and Natural History Society, Northern Branch, 1903), p.248. For singers, see Skinner, Journal, p.11. The church court records include several lengthy disputes between clergymen and musicians. By the 1840s, far west Somerset was considered unusual for having church musicians: Thornton, West Country Clergyman, p.20. Parishioners were often willing to fight hard for their rights. At Burrington, in the Mendips, parishioners had the right to choose their own incumbent with the approval of the rector of Wrington. In 1831, when the Rev. John Vane refused their candidate, they won their suit at the Court of Common Pleas. Unfortunately, the proposed man declined the living and Vane nominated himself, holding the living for forty years: Knight, Heart of Mendip, p.275.

<sup>131</sup>For the Evangelicals, see Kemm, 'Church of England', pp.112;115;122-123. Non-evangelicals ministered to the poor in new and traditional ways. The Rev. J.M. Rogers, Lord of the Manor and rector of Berkley, founded mutual benefit clubs in his parish in the 1780s, to which he contributed heavily in response to 'proper' behaviour on the part of his parishioners (i.e., at marriages): pp.133-35. The rector of Charlton Mackrell, a recently enclosed parish, was still having the poor into his kitchen for Christmas dinner in the early nineteenth century: N&Q for S&D 26(1955):12-13.

Kemm, (p.59) concludes that 'Tithe was the chief problem and cause of discord in country parishes'. The local ecclesiastical court records abound with tithe



forsaken divine service because their rector, 'by his Drunkenness Prophanes Swearing and other bad Crimes' had made the service 'more a place of show game than Devotion'. The parish clerk noted that people from miles around attended Holcombe church 'for Sport and Diversion and not for Devotion'.<sup>132</sup>

The enforcement of church attendance and the sabbath laws had ceased to be a concern of the Somerset church courts in the eighteenth century, and so coercion, where it did exist, generally originated with the local squire. At Wrington the manorial courts could fine parishioners for failure to attend church and at Newton St. Loe it was the land agent's duty to admonish non-attenders. Not all powerful squires were consistent supporters of the Established Church nor of its duty to the poor. The Gore Langtons kept the Methodists out of

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causes (the acrimony surrounding the Rev. John Skinner's cause at Camerton is described in his Journal); disputes over church rates (an urban phenomenon) and fees are somewhat less frequent. Though Somerset's historians and agricultural improvers were quick to dismiss tithe as a major problem (tithe was 'upon a very liberal footing' and the clergymen were very 'moderate in their demands' according to George Alexander Cooke, Topographical and Statistical Description of the County of Somerset Topography of Great Britain Series (London, n.d.), p.160) most were ready to abolish it. See Billingsley, General View of Agriculture, p.35 and Locke, Supplement to Collinson, p.15 (who saw tithes as more of an obstacle to improvement).

<sup>132</sup>Salmon v. Rake, D/D/Ca 425(1754) and D/D/C (1754).

Newton St. Loe but did not provide seats for the poor in the parish church; and the squires of Camerton granted land for the construction of a Nonconformist chapel. A lax squire, or an absent one, could have a significant effect on church attendance: at Orchardleigh, the congregation materialised only when the Lord of the Manor was in residence. Factory owners, too, could fill pews if they chose to do so. At Twerton, a manufacturer intent on instilling factory discipline incorporated sobriety, education and church attendance into his scheme for regulating workers' lives.<sup>133</sup>

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<sup>133</sup>For one of the very few examples of correction for prophaning the sabbath and drawing people from church in our period, see the penances of John Hurditch and James Butcher of Congresbury: D/D/C Penances, box PB9 (1737). For Wrington: Mr. and Mrs. D. James, et al., 'Manorial Court Papers, 1733-1757', p.56. For Newton St. Loe, see Davis, 'Newton St. Loe', pp.95;311; 334. By 1846 the poor kept out of the vicinity of Newton St. Loe church (p.87). The Gore Langton family seems to have realised more of the possibilities inherent in church attendance by the late 1850s, when they added free sittings and built a family pew that faced the congregation (p.311). For Camerton, see Skinner, *Journal*, pp.23-24. For Orchardleigh, see Kemm, 'Church of England', pp.99-100. On the other hand, in the far west of the county, where the gentry were thin on the ground and livings were often meagre, parishioners were not the ones to forego attendance. Most of the rectors of Stoke Pero did not bother to attend or officiate from the late seventeenth century into the nineteenth century and among the rectors of Porlock, Moggridge (1734-1763 and also the vicar of Minehead) never signed a Porlock register and Pitman (1811-1831) never entered the parish: Sir Charles E.H. Chadwyck-Healey, The History of the Part of West Somerset comprising the parishes of Luccombe, Selworthy, Stoke Pero, Porlock, Culbone and Oare (London: Henry Sotheran and Company, 1901), pp.235-37;351;359-60. By the late 1840s, while there was no resident gentry in the

The importance of the local magnate in regulating religious affairs in the absence of an active church court had further repercussions in shaping local social relations and in determining the place of the clergyman within the parish. Far more ubiquitous in the eighteenth century than the drunken parson was the clerical magistrate, and both the clergy's increasing involvement in the administration of the criminal law and its growing social identification with the other source of local power, the squirarchy, shaped popular attitudes towards the Church of England. While the upper clergy had long moved and married among the nation's elite, the structure of patronage and an improvement in the status of the lower clergy pushed parson and squire closer together as the century progressed and insured a community of interest between them.<sup>134</sup> By the end of the eighteenth century,

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area, there had been an influx of educated and mildly Evangelical clergymen, and Thornton was able to characterise the local farmers as 'very moral and well-behaved' and the poor as 'very ignorant' but good attenders: West Country Clergyman, pp.23-25. (Compare this with Sydney Smith's slightly earlier description of his west Somerset parishioners as '"civil (very civil), drunken, wretched and degraded"': Bell, Sydney Smith, p.149). For Twerton, see Wroughton, 'Bath and its Workers', p.14.

<sup>134</sup>Marshall, George Hooper, p.184: Bishop Hooper's daughter, for instance, married John Prowse in 1707 and he became a county M.P. the following year. In the seventeenth century, less than a quarter of the clergy Stieg studied classed themselves as gentlemen; their benefices averaged £85 6s. 0d. per annum: 'Parochial Clergy', p.27.

approximately one-quarter of the livings in Somerset were in the gift of the local squire, and half of the livings in private patronage went to a relative of the patron or to someone able to purchase patronage. This meant that the parson might be the squire, as at Bleadon, where the Rev. David Williams was the principal landowner, or the squire's son.<sup>135</sup> While only a quarter of the clergymen receiving benefices in the county between 1625 and 1685 considered themselves gentlemen, when James Woodforde took up the curacy of Thurloxton in 1763 he was able to live with the local squire in his style (which included hunting with him) for £21 a year. In the early nineteenth century, John Skinner objected strenuously to his sons playing in cricket matches that included servants and Sydney Smith, an affluent canon of St. Paul's by the time he moved to Combe Florey, felt himself superior to whatever the local squirarchy had to offer.<sup>136</sup> Even

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<sup>135</sup>Kemm, 'Church of England', p.30. For Williams, see Knight, Sea-Board of Mendip, p.347. The patronage question was a clerical preoccupation. James Woodforde spent much of his early career exchanging curacies until he settled into his living in Norfolk: Diary, 1:32-35;47. John Skinner's uncle purchased the living at Camerton for him: Journal, p.xi. And Sydney Smith got his Somerset living through an elaborate exchange with the incumbent of Combe Florey and a large landholder in West Somerset. Mr. Escott's son, who lived with his father on his estate five miles from the village, served as curate and was given Smith's old living when Escott, Sr., vacated for him: Bell, Sydney Smith, p.147 and Savage, Carhampton, p.290.

<sup>136</sup>Stieg, 'Parochial Clergy', p.27; Woodforde,

where kinship and incomes did not enable clergymen to mix with the local magnates, many clergymen chose to widen the gulf between themselves and their parishioners and put themselves more firmly in the squire's camp by becoming magistrates.<sup>137</sup> In 1787, one-sixth of the diocese's clergymen were also magistrates. Cooperation between the clergy and the civil authority was not new, but the identification of the clergy with the civil authority at a time when the law fell with peculiar weight on the malfeasances of the poor would not have been without meaning for most parishioners.<sup>138</sup> Indeed,

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Diary, 1:32-33; Skinner, Journal, p.15; Bell, Sydney Smith, pp.150;201. Insofar as Woodforde and Skinner are representatives of their respective times, they illustrate a hardening of class lines between the mid-eighteenth century and the early nineteenth century. Woodforde, who served in country parishes, may have lived like a squire but he mixed freely with all classes and was an enthusiastic participant in the popular culture of his day. Skinner, immured in a mining parish, brooded constantly on class distinctions and saw himself as being entirely removed from the culture of his collier-parishioners.

<sup>137</sup>Many clergymen, though well-educated and considered gentlemen, could not afford to live among magnates: James Obelkevich, Religion and Rural Society: South Lindsey 1825-1875 (Oxford: Clarendon Press, 1976), pp.126-127. Obelkevich suggests that clergymen buttressed their influence by relying on local magnates for the enforcement the church courts no longer provided (pp.161-62) and the adoption of the burdens of the magistracy may have similarly augmented their authority.

<sup>138</sup>Kemm, 'Church of England', p.131. Sixty-eight clergymen were magistrates. Stieg, 'Parochial Clergy', p.170, cites an example of a seventeenth-century Quarter Sessions case in which a minister undertakes to see that a fustian weaver pays a fine for bearing a

it is likely that the clergy's role in the administration of the bastardy laws in the eighteenth and nineteenth centuries was far more significant, in terms of the regulation of plebeian sexuality, than anything they said in the pulpit or any residual authority they derived from the ecclesiastical law.

The Catholics, as we have noted, were a tiny minority in the diocese. This did not prevent anxiety among clergymen, such as John Skinner, who happened to reside near one of a small number of Catholic outposts. Nor did it abate the popular anti-Catholicism which had found expression in the Monmouth rebellion.<sup>139</sup> It was

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bastard. The bastardy laws and the game laws, in particular, burdened the poor in this period. Of course some clerical J.P.s welcomed their additional role as an opportunity to aid their parishioners. Sydney Smith, who opposed the game laws, saw his legal activities in this paternalistic light: Bell, Sydney Smith, pp.107-113. During the Swing disturbances in Somerset, at least one threatening letter was sent to a parson (at Draycott) and at Ilminster Swing's enemies were identified as parsons, landlords and the gentry: Hobsbawm and Rudé, Captain Swing, Appendix III.

Parsons were also involved in the administration of the poor laws, old and new, as vestry members and as guardians. At Newton St. Loe the rector was chairman of the vestry under the Old Poor Law; but clergy participation in the administration of the New Poor Law in that area of the county declined after the early years: Davis, 'Newton St. Loe', pp.102;161.

<sup>139</sup>John Bossy, The English Catholic Community 1570-1850 (New York: Oxford University Press, 1976) puts the proportion of Catholics in the county at between 1% and 5% in 1767 (map, p.408) and counts six Catholic missions in 1773 (map, p.410) and nine in 1829 (map,

only in the city of Bath, where a large number of those born outside the county, and particularly Irish immigrants, congregated, that a sizeable Catholic community existed. In 1851 there were eight places of Catholic worship in the county, three of which were in Bath. The Catholics enjoyed high attendance on census day in that year, with 1416 (or almost 1% of all churchgoers that day) attending Roman Catholic services.<sup>140</sup>

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p.412). Missions and outposts came and went in the eighteenth century, and much of the dispersed Catholic population was served by Jesuit 'riding-missioners'. The Coombs family maintained a Catholic chapel in Camerton (J. Anthony Williams, ed. Post-Reformation Catholicism in Bath, Catholic Record Society Publications (Record Series), vols.65-66 (Catholic Record Society, 1975), 1:59-60;69) and there were Catholics in the neighbourhood in Skinner's time (see W.J. Wedlake, 'Tithe Disputes at Camerton, Somerset, 1800-1839' in Second North Somerset Miscellany, pp.33;49, for Skinner's assault on a local Catholic which ended in a suit at Assizes and £50 in damages awarded against Skinner). In general, Skinner felt better about his Catholic neighbours than his Nonconformist ones: Journal, pp.96-98;200. The Catholic community may have been growing in the nineteenth century. Taunton opened its first Catholic chapel since the Reformation in 1822 (Watson, Chronological History, p.190) and Shepton Mallet's Catholics built a chapel in 1804 (Farbrother, Shepton Mallet, p.85. For popular anti-Catholicism, see Robin Clifton, 'The Popular Fear of Catholics During the English Revolution', Past and Present, 52(1971), pp.23-25.

<sup>140</sup>Bath was the centre of Catholic activity in the diocese, the point from which peripatetic priests emanated: Williams, Post-Reformation Catholicism in Bath, 1:60. While Catholic facilities could accommodate only 0.5% of the county's population, they could seat 1.4% of Bath's population; 4% of those who attended services in England and Wales went to Catholic chapels on census day.

Dissent, both old and new, was significant as a political, educational and social forces as well as a religious alternative in the county. Unlike the Catholics, who were legally and physically isolated (especially outside Bath) and who depended on a few wealthy families to support religious activity, the Nonconformists were legally tolerated and integrated into the communities in which they lived. Dissent was especially well entrenched in the county's western cloth towns, where it had grown rapidly in the late seventeenth century.<sup>141</sup> In the 1780s, John Halliday, M.P. for Taunton, acknowledged the political power wielded by the town's manufacturers, despite a decline in the cloth trade, and canvassed, in a private letter, ways to appease them in order to avoid a contested election. "It must be observed", he noted, "that all the principal manufacturers of T[aunton] are Dissenters and much at enmity with the Corporation, who will not admit any person of that description to become a magistrate of the town".<sup>142</sup> The older sects were joined by Wesleyan Methodism in the course of the eighteenth century, which took in not only the western cloth towns and Bath, that

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<sup>141</sup>Beck, 'Recusancy and Nonconformity', pp.215-18. (The Episcopal Returns for 1669 show the extent of Nonconformity in the diocese); Bettey, Wessex, p.94.

<sup>142</sup>N&O for S&D 25 (1950):202-3.



locus of sin and salvation, but spread throughout the century into neglected and sometimes isolated communities where the Church of England failed to penetrate. Frome, a favourite stopping place on the Wesleyan itinerary (a meeting house opened in 1779) was purportedly such a hotbed of Methodism that a Bristol pedlar sang Wesley's hymns on his local rounds and many mining parishes were acknowledged Wesleyan strongholds.<sup>143</sup> In 1851, the Wesleyan Methodists were by far the largest Nonconformist body in the county, with 309 places of worship and 55,052 sittings on census day. Yet some clergymen were friendly to Methodism and willingly shared their flocks with local ministers, and others recognised a religious division of labour between Methodists and Anglicans that reflected the limited horizons of the Established Church.<sup>144</sup> The

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<sup>143</sup>Whitefield and Wesley visited the western cloth towns early on, drawing large crowds. The comings and goings of preachers, the openings and closings of chapels and the other events of Somerset Nonconformist life are noted in Watson, Chronological History, espec. pp.156-203. Wesleyanism seems to have been slow to penetrate west Somerset's remote rural areas: see Chadwyck-Healey, West Somerset, pp.28-29. For Nonconformity in the Radstock coalfield, see Bulley, 'Coal Industry', pp.148-49. For Frome, see Hunt, Somerset Diocese, p.233.

<sup>144</sup>The line between Evangelicals and Dissenters was not always firmly drawn. Some west Somerset Evangelical clergymen seceded to become Trinitarian or Particular Baptists: Kemm, 'Church of England', p.112. Locke's Burnham Society brought together clergymen and Dissenting preachers to discuss religious questions between 1772 and 1796: Locke, Supplement to Collinson, p.16.

Rev. Richard Warner of Bath, who dutifully abhorred Methodism in general, thought it had its uses among the colliers: 'the strong doctrines of Methodism may operate usefully with those classes of society whose hearts, hardened by profligacy, could not be affected by the mild precepts of rational Christianity'. The Rev. John Skinner, who actually lived among the colliers, was less resigned, but acknowledged that the Nonconformists had privileged access to information on 'the private life and disposition of the poorer orders'.<sup>145</sup> In a parish where the squire granted land for the construction of a new Nonconformist chapel, and where the paymaster of the collieries was an active Nonconformist, Skinner often found himself vying for souls beside sickbeds or deathbeds. He, too, saw the difference in class terms: 'Is it the same thing to attend the crude, undigested effusion of a cobbler or a collier under the name of prayer, as the beautiful service of our Liturgy'?<sup>146</sup>

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<sup>145</sup>Warner, Excursions from Bath, pp.273-74; Skinner, Journal, p.38.

<sup>146</sup>Wedlake, 'Tithe Disputes at Camerton', pp.32-33; Skinner, Journal, pp.23-24. The Stephens' family lack of interest in the Church and in other educational and charitable activities, well-documented in Skinner's Journal, predates his arrival in the parish in 1800. Philip Stevens, Esq., and four labourers were presented at Wells Sessions in 1772 for digging a ditch across a path leading to Camerton church and thus hindering parishioners from attending church: Q/SI 392 (Wells, 1772).

The tensions between old and new Dissent, and between Anglicanism and Dissent, are evinced by the trail of riots that marked out Wesley's preaching itinerary; by the struggles for the control of corporations; and, more peaceably, in expanding and competing networks of Sunday schools.<sup>147</sup> Though the Evangelicals laboured hardest to counteract the influence of Methodism in neglected parishes, the Christianising efforts of both the Methodists and Evangelicals often took place in areas where there was no recent tradition of church court use and therefore had little effect on the volume of litigation at Wells. There is only one defamation suit in which Nonconformity plays an explicit role, and it is unclear whether the allegation--that a married woman has run off with an itinerant preacher--is intended to have a religious resonance unconnected with the accusation of adultery.<sup>148</sup>

The religious census of 1851 enables us to place Somerset churchgoing at the end of our period in a national context.<sup>149</sup> There were in the registration county 553 places of Anglican worship with 181,484

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<sup>147</sup>For a riot at Shepton Mallet in 1746, see Watson, Chronological History, p.161.

<sup>148</sup>Sanday v. Haine, D/D/C (1821).

<sup>149</sup>Census day figures are based on the registration county, count those at the best-attended service at each location, and therefore do not account for the overlap created by those who attended more than one service.

sittings and 576 other places of worship that could seat 120,327 people; together, all places of worship could seat 68% of the population. The division of sittings between the Anglicans (61%) and the Dissenters (39%) meant that in 1851 Somerset ranked fifteenth among Anglican counties and twenty-seventh among Dissenting counties. This division was reflected in church and chapel attendance on census day, when 44% of the county's population attended services, 59% of them (116,484) attending the Church of England and 40% of them (80,514) going to Dissenting services. In England and Wales the figures show a lower overall attendance (35%) and a marked shift towards the chapel: 47% went to the Church of England and 49% to Protestant Dissenting services. Where once Somerset had been a notably Nonconformist county, it was in 1851 a more Anglican one. This does not necessarily reflect a decline in Dissent, or an Anglican renaissance, in the county; it simply records the growth of Methodism in the industrial counties of England. While Dissenters remained numerous and, in some towns, politically powerful, the decline of the cloth trade and the absence of any new industry diminished Somerset's importance as a stronghold of Dissent.

In a society where illiteracy remained common, religious institutions were important conduits of knowledge and frequently functioned formally as

educational providers.<sup>150</sup> Educational provision was erratic in its geographical distribution and in its quality in the eighteenth century: the strength of Dissent, the pattern of benefactions, the interests of squires or the availability of a person able to assume the role of teacher might dictate the location and ambitions of schools. Bath was well-served from an early date, while the rural parts of west Somerset lagged far behind. Nonconformist schools and Sunday schools served local adherents and trained Dissenting preachers. A county survey of 1742 mentions two schools in Bath and fifteen additional schools in thirteen parishes (Defoe claimed the schoolmaster of Martock as a relation) but by the end of the century schools were regularly listed in directories as well as local histories.<sup>151</sup>

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<sup>150</sup>Illiteracy in 1838-1839 is recorded in Hobsbawm and Rude, Captain Swing, p.42. In Somerset, 36% of the men in that period, and 47% of the women (42% overall) marked the marriage register when they married. These figures are typical of the agricultural counties surveyed, and surely underestimates true illiteracy, because the ability to sign one's name does not measure the ability to read or write.

<sup>151</sup>For an example of the variety of schools in one area, from grammar schools to dame schools, see Bulley, 'Coal Industry', pp.150-52. Where lords of the manor were tolerant, as at Porlock and Watchet, Nonconformist sects and schools made headway; at Minehead, where Nonconformity was strenuously excluded, schools did not open until the 1820s, and these were run by the

In the eighteenth century, educational improvement, or at least the proliferation of schools, often originated with religious groups who brought education, as well as religion, to notoriously ill-served populations. Wesley and his colleagues had a strong commitment to literacy, and in addition to opening childrens' schools, Wesley taught adults to read so that he could preach by pamphlet. Whitefield had founded a school for the children of the Kingswood colliers as early as 1739, and local Methodists opened schools at Publow and Keynsham.<sup>152</sup> In the late eighteenth century, Hannah More and the Evangelicals, who were more concerned with moral improvement than literacy, devoted their energies to the Sunday school movement. In 1851 there were 719

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Methodists: Wedlake, Watchet, p.118. For Bath, see Chapter 8, below. For west Somerset, see Chadwyck-Healey, West Somerset, p.29. Schools ranged from the ancient grammar schools of the incorporated towns to an old woman teaching reading at Stoke Pero, c.1818. For Nonconformist schools see Rural Elegance Display'd (1768), p.309. Bridgewater had a Dissenting Academy for preachers. The Nonconformists also opened Sunday schools; see Watson, Chronological History, pp.174;177. For the 1742 survey see Compleat History (1742), pp.191-92. For the late eighteenth century see entries in Collinson, Somerset; for directories, see N&O for S&D, 21(1935): 27-30: Glastonbury, Somerton and Wrington listed two free schools, a charity school and a Sunday school between them in 1792. For Martock, see Defoe, Tour, 1:219.

<sup>152</sup>Gordon T. Brigg, 'The Contribution of John Wesley to the Social and Educational Life of Bristol and Its Neighbourhood' (M.A. dissertation, University of Bristol, 1959), pp.71;77;123;128.

such schools in the county serving 56,090 scholars. Approximately half of all children aged five to fourteen (53,720) were accommodated in Somerset's 1381 day schools in that year, and though overlap between day scholars and Sunday scholars and the dismal quality of much of the education on offer lessen the significance of these numbers, literacy was clearly gaining ground.<sup>153</sup> More importantly, the proliferation of schools--and particularly schools with religious affiliations--broadened the churches' opportunities for carrying a message about manners and morals to the young at a time when that message was more sharply focussed. The legacy of all those Sunday schools, then, may not have been a thorough grounding in Christian principles but an apprehension of the importance of propriety and decorum in making one's way in the world.

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<sup>153</sup>Census of 1851. The rapid expansion of educational facilities in this period is illustrated by a comparison with 1818, when there were 109 endowed schools, 487 day schools and 253 Sunday schools in Somerset: Dunning, Somerset, p.84. Local studies suggest that the gentry contributed to the expansion. At Wraxall, children were consigned to a dame school teaching 'Christ's Cross' as late as 1801, but had a schoolroom built for them by a local squire in 1809. Full primary education provision came for boys in 1856: the Rev. George S. Master, Collections for a Parochial History of Wraxall (Bristol: Somersetshire Archaeological and Natural History Society, Northern Branch, 1900), p.127. Newton St. Loe, which had a charity school open to all children from the early eighteenth century, did not acquire complete elementary school provision until 1846 when the parson, a member of the Gore Langton family, built a village school at his own expence on the squire's land: Davis, 'Newton St. Loe', pp.90-92. As Davis points out, local opportunities for child employment, particularly once the coalworks closed, had diminished considerably by this time.

It is difficult to assess the relationship between religious belief and religious practise and use of and respect for the church courts and their sanctions. Nonconformists were free to use the courts, but there is no direct evidence that they initiated defamation suits at Wells and the lower level of church court use in the west of the county may reflect the strength of Dissent there, particularly in the cloth towns. The Methodists, who were slow to divorce themselves from the Church of England and its institutions, may have felt comfortable using the church courts as Christians; but where sects promoted internal disciplinary procedures or a distinctive moral coal, use of the courts would have declined. The Quakers had a long history of antagonistic relations with the church courts, where they were regularly prosecuted for failing to pay tithes.<sup>154</sup> Catholics, as we shall see, ran into great difficulties when deposing and probably avoided the church courts when they could. There were trends within the Established Church itself, particularly in the latter half of our

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<sup>154</sup>The Quakers also supervised their own marriages (the process is described in Fox, Quaker Homespun). Jews, of whom there were very few in Somerset, seem to have made at least one unsuccessful attempt to use the church courts to litigate over defamation: see Cohen v. Bryant, D/D/Ca 451(1826). Susan Cohen and her dyer-husband Israel were also involved in two assaults a decade later; their adversary was another Bridgewater dyer, Abraham Marbi: Q/SI 457 (Michaelmas, 1837) and Q/SI 458 (Epiphany, 1838).



period, which may have had a dampening effect on public insult and the use of the church courts to clear one's name. The Evangelicals who, under the leadership of Hannah More, promoted a middle class version of propriety and respectability, heartily disapproved of such vulgar manifestations as the public slanging match and would have found the ritual of penance in a defamation case, with its repetition of sexual insult, mortifying and counterproductive. More widespread residency of a clergy that aspired, on somewhat improved incomes, to the status of gentlemen may have put obstacles in the way of potential litigants who relied on their parson to steer them to Wells. The clash of values between the respectable clergy and parishioners who adhered to traditional styles of insult and punishment may have kept more than a few away from the church courts as well as from the Church. And a younger generation exposed to the teachings of Sunday schools and church-sponsored day schools may have abandoned the language of insult and the modes of deploying it familiar to their parents.

It has been shown that the rural poor took a syncretic view of religion and of religious institutions, paganising Christianity and reinterpreting the sacraments in an unorthodox light, and it is likely that they took an instrumental view of the church courts.<sup>155</sup>

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<sup>155</sup>See in particular Obelkevich, Religion and

Villagers persisted in playing fives against the walls of the churches they worshipped in, and townspeople had long lived in an environment that incorporated the extremes of desacralisation and religious fervour.<sup>156</sup> At Glastonbury, those who resided near the site of the old monastery were accustomed to seeing its remains converted to mundane purposes: in the late eighteenth century, Maton observed that the abbey gate and hospice were inns and that leaded coffins were used as cisterns. But Glastonbury also witnessed, at least until 1751, the annual outpouring of faith that brought thousands of pilgrims to the town to see the miraculous thorn bloom at Christmas.<sup>157</sup> Such effusions did not appeal to the eighteenth-century rationalists who chronicled them, but they played an important role in popular religious practise.

Among the majority of the population, religious practise and religious belief were determined by the interplay of many factors--the state of local facilities,

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Rural Society and Keith Thomas, Religion and the Decline of Magic (Harmondsworth: Penguin Books Ltd., 1971).

<sup>156</sup>Disputes between churchwardens, ministers and fives players exercise a peculiar fascination over antiquarians; the pages of N&O for S&D are littered with examples. See, for example, vol.23 (1842):194-95 for the long battle at Wrington, which ended in 1824.

<sup>157</sup>Maton, Observations, 2:148;151;159-60. For a pilgrimage of 10,000 to Glastonbury in 1751 (based on the dream of a North Wootton man) see Locke, Supplement to Collinson, p.10.

the personality of the parson, the coercive power of squire or parson or employer among them--but remained remarkably resistant to the imposition of uniformity from above. And so it was with the church courts. They could be used, or not, according to one's legal needs. The fact that the courts' decrees, and on occasion penance, were publicised in the parish church only emphasised its role as a centre of communications. While the level of ex officio litigation, litigation initiated by the church and its officials, declines precipitously in the first half of our period, instance litigation, brought by individuals in response to private disputes, does not show a similar sensitivity to the health and power of the state church. Nor, in the later period, does the level of instance litigation suggest an immediate response to the reformation of manners that ceased to tolerate public sexual insult and which raised bulwarks of opposition to defamation and its legal correction among the clergy and within the church courts themselves. While religion played a part in shaping concepts of honour and punishment, of neighbourliness and order, and the presence or absence of the church's representatives in the parish may have affected the likelihood of bringing a suit in the ecclesiastical courts, adherence to the doctrines of the Church of England and regular attendance at church

probably had little effect on the largely legal decisions that brought litigants to Wells.

Had Celia Fiennes or Daniel Defoe been able to repeat their journeys through Somerset 150 years later, they would no doubt have been struck by the change visible everywhere. The thriving woollen industry, celebrated by Defoe, had all but disappeared in both the eastern and western halves of the county; large tracts of land formerly under the plow had been converted to pasture; the remaining commons had been enclosed and the Levels drained, cultivated and settled. Even Bath, whose attractions had begun to emerge in Celia Fiennes's time, had changed: incomparably larger than it was in 1700, the city nonetheless had ceased to be a major resort and was settling into a quieter existence as a haven for the retired. The county, still well-populated and prosperous, had not been immune to the improving age and any traveller would note improvements in roads and other forms of transport; in agricultural and in urban amenities. Yet Somerset was no longer in the forefront of English counties, either in population or prosperity. The early modern economy based on manufacture and agriculture, the foundation of the county's pre-eminence, had been replaced by a largely agricultural economy buffeted by agricultural depression and a decline in rural population. Though prosperity would return to the

county, it would do so after 1850, and after more than a century of economic and social change that left its mark both on the landscape of Somerset and on the social relations of its inhabitants.

## CHAPTER 3

## THE CHURCH COURTS

I. Introduction

The boundaries of the diocese of Bath and Wells are almost identical with those of the county of Somerset. Composed of 478 parishes, the diocese was administered in this period from Wells.<sup>1</sup> It was at Wells that the Consistory Episcopal Court met in the 'ancient place', an open chapel near the font of the Cathedral.<sup>2</sup> The diocese was divided into three archdeaconries, each, at one time, with its own officials and court. In the eighteenth and nineteenth centuries the episcopal court exercised concurrent jurisdiction with the archidiaconal courts of Taunton

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<sup>1</sup>This figure is taken from Quaife, Wanton Wenches, pp. 275-79.

<sup>2</sup>And was still meeting there in the 1880s: PP 1883, xxiv, Report of the Commissioners appointed to inquire into the Constitution and working of the ecclesiastical courts, p. 700. When I inquired at the cathedral (1980) I was told--by a canon who referred to the court with great disgust--that the court had ceased operations about fifteen years previously. He thought it had met in what is now the gift shop, near the entrance. Dunning contends that the court was held in the Lady Chapel from at least the fifteenth century until the 1930s: Robert W. Dunning, 'The Wells Consistory Court in the Fifteenth Century', Somerset Archaeology and Natural History 106 (1961-2):49.

and Wells, and sole jurisdiction in the archdeaconry of Bath.<sup>3</sup> Most of the court papers for the western archdeaconry of Taunton disappeared early in this century. The papers in causes and the Act books of both the episcopal and archidiaconal courts of Wells exist in a more or less complete series for the period 1730 to 1850, with a gap in the Act books from 1812 to 1822. More than fifty parishes were exempt from the attentions of at least the archidiaconal courts, and were administered independently as peculiar jurisdictions by the Dean of Wells (15), the Dean and Chapter of Wells (11), the prebendaries of Wells (there were seventeen prebends, three composed of more than a single parish), the Chancellor of the Cathedral (2), the Precentor of the Cathedral (1), the Dean and Chapter of Bristol (3), two Lords of the Manor (Witham Friary, extinguished in 1827, and Ilminster), and a rector (West Lydford). These lay and cathedral officials could hold their own Visitations and preside over their own courts. A parliamentary return of 1828 lists twenty-five peculiar courts in the diocese, six of which were still hearing causes the following year.<sup>4</sup> Despite the wealth

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<sup>3</sup>Quaife, Wanton Wenches, pp. 38; 187, claims that the episcopal court and the archidiaconal court of Taunton were the most active courts in his period. It is clear, however, that by the early nineteenth century the Taunton Court was hearing very few cases.

<sup>4</sup>pp 1828, xx, Returns of all Courts which exercise Ecclesiastical Jurisdiction. in England and

of peculiar jurisdictions in Bath and Wells, and the continuing activity of some peculiar courts, causes from many of these parishes found their way into the episcopal court.<sup>5</sup> Thus, the episcopal court exercised authority over almost all the inhabitants of the county of Somerset.

Several studies of the ecclesiastical courts have been written in the past thirty years, expanding on the early work of the church historians and archivists who first brought the records of the spiritual courts to scholarly attention.<sup>6</sup> Though most of these studies

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Wales, pp. 6-9. This also lists the personnel of each of the twenty-five courts, all of which probably continued to transact testamentary business. PP 1828, xx, Returns of all Courts and other Authorities in England and Wales ...empowered to grant Probates of Wills and Letters of Administrations...and Return of the Number of Causes instituted in the several courts which exercise Ecclesiastical Jurisdiction...in the three years immediately preceding the 1st of January 1827; distinguishing the nature of such Causes; together with a statement of the amount of the Fees paid in each of the aforesaid years to the Judges Registrars and Deputy Registrars of the said Courts, pp.9-19; PP 1831-2, xxiv, Special and General Reports made to His Majesty by the Commissioners Appointed to Inquire into the Practice and Jurisdiction of the Ecclesiastical Courts in England and Wales, p. 554.

<sup>5</sup>Only Lichfield, Lincoln, Winchester and York had more jurisdictions than Bath and Wells: PP1831-2, xxiv, Report, p. 552.

<sup>6</sup>Ralph Houlbrooke describes the literature for the period before the eighteenth century in his introduction to Church Courts and the People During the English Reformation 1520-1570 (Oxford University Press, 1979), pp.1-4. In this and other matters throughout the chapter I am greatly indebted to Houlbrooke's work on the church courts. An indispensable guide to the records of the church courts that goes unmentioned in Houlbrooke's



treat earlier eras of ecclesiastical history, the system they describe would have been familiar to anyone practising in the Wells courts between 1733 and 1850. This chapter, therefore, has two aims: to introduce the law, organisation, personnel and procedure of the Wells courts, and at the same time to contrast these courts with church courts in other places and periods.

## II. Law

The law of the church courts was an amalgam of civil, canon, statute and common law. From civil law came the courts' distinctive procedure, characterised by the examination of witnesses in private (a distinction which was to be erased in 1854) and the absence of a jury.<sup>7</sup> Canon law, inherited from the medieval western church in the form of decrees, decretals and constitutions, both legatine and provincial, was consolidated for the English church in the Canons of 1603.<sup>8</sup> The canons

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introduction is: Dorothy M. Owen, The Records of the Established Church in England; Excluding Parochial Records, British Records Association, Archives and the User, No. 1 (1970).

<sup>7</sup>PP 1831-2, xxiv, Report, p. 273 for the procedure followed at Wells. Depositions were still read over in the presence of a surrogate before being signed. See also Richard Burn, Ecclesiastical Law, 2 vols. (London: H. Woodfall and W. Strahan, 1763), I:v.

<sup>8</sup>Houlbrooke, Church Courts and the People, p. 16; Burn, Ecclesiastical Law (1763), I:vi, viii.

codified the jurisdiction of the courts over a wide variety of offences concerning the morality of the clergy and the laity and the practise of Christianity, as well as stipulating qualifications for court personnel.<sup>9</sup> This remarkably slow adjustment of canon law to the institutional and theological changes of the Reformation shifted the initiative toward statute law, and 'from 1529 onwards parliamentary legislation was the most important source of change in the ecclesiastical law, and the changes made were much more extensive than those achieved before that date.'<sup>10</sup> The contribution of statute law ranged from the Thirty-nine Articles and the Rubrick of the Book of Common Prayer to acts of parliament regulating marriage or the election of churchwardens, and it extended into the mid-nineteenth century when the church courts were practically legislated out of existence by Parliament. Such fundamental aspects of the church courts as jurisdiction, procedure, the qualification of personnel and the correction of offences became the subject of parliamentary legislation.<sup>11</sup> Finally, from

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<sup>9</sup>Christopher Hill, Society and Puritanism in Pre-Revolutionary England, 2nd ed. (New York: Schocken Books, 1967), p. 302.

<sup>10</sup>Houlbrooke, Church Courts and the People, p. 18.

<sup>11</sup>See Houlbrooke, Church Courts and the People, pp. 18-9, for the legal changes of the Reformation.

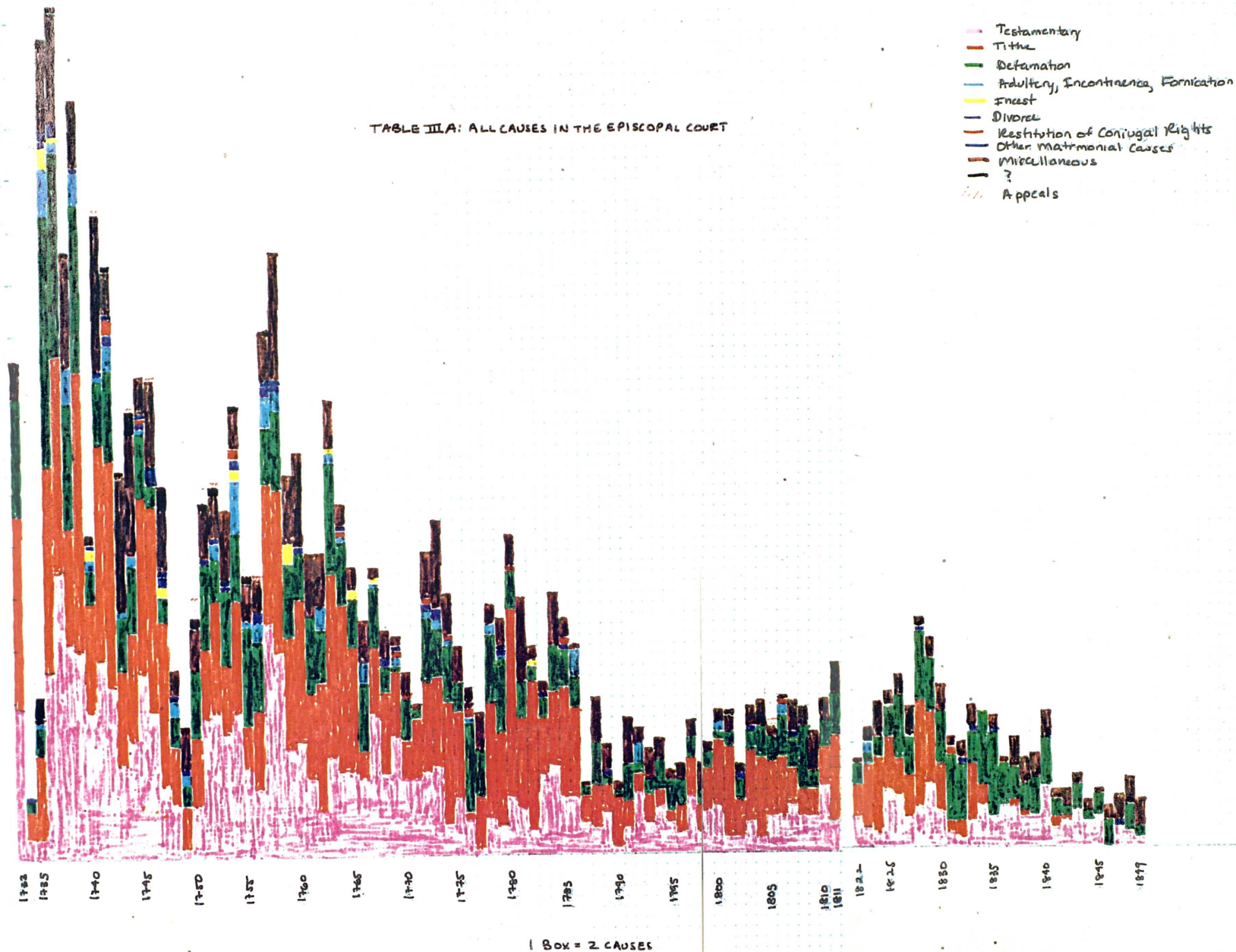
common law came a history of contention and competition that reached its height in the Puritan era and which produced, over a longer period, instruments such as the writ of Prohibition that regulated relations between the spiritual and common law courts. Both the common law and the law of the church courts shared a respect for custom, and the influence of custom is seen everywhere in ecclesiastical litigation. Custom, as established by usage, consent or a plurality of acts could determine the court of first instance for particular kinds of causes, the days and hours of sitting and the mode for proceeding in ex officio causes.<sup>12</sup>

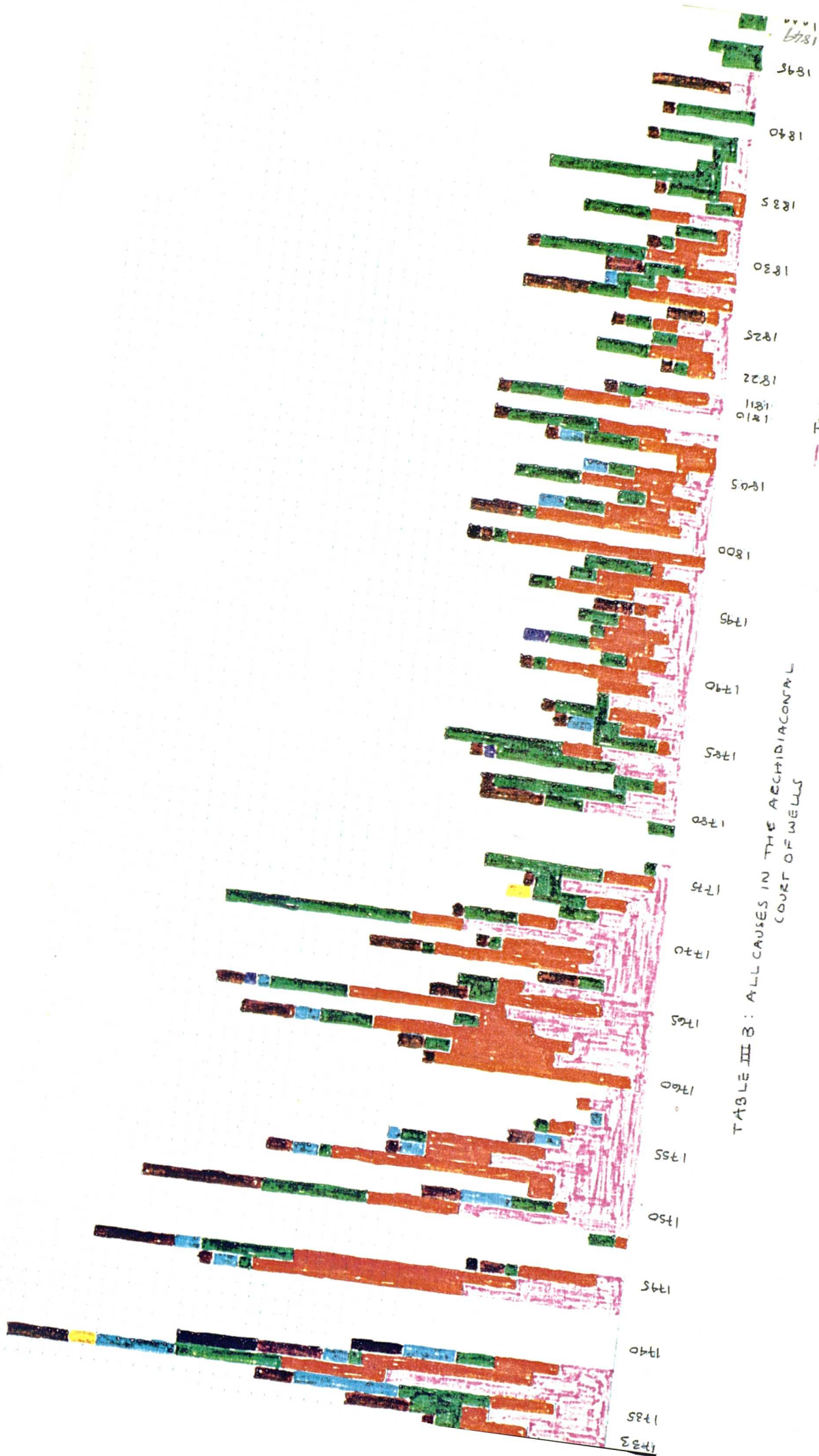
A litigant, when choosing between common law and church courts, might of course consider the diverse origins of ecclesiastical law. The immediate problem, however, was jurisdictional, and by the mid-eighteenth century the church courts were more firmly limited to spiritual matters than they had been in the past. (See Tables IIIA and IIIB) The consistory court at Wells entertained testamentary, matrimonial, tithe, defamation and sexual incontinence causes; it also heard causes involving personnel of the church and the courts. Plaintiffs could prosecute for nonpayment of church rates

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<sup>12</sup>James T. Law, Forms of Ecclesiastical Law, 2nd ed. (London: William Benning & Co, 1844), pp. 6-8.

TABLE IIIA: ALL CAUSES IN THE EPISCOPAL COURT





### Notes on Tables IIIA and IIIB

1. For years in which the Act books are incomplete or missing, see Bibliography.
2. Miscellaneous Causes include pew and other faculties; brawling in church; irreverence; subtraction of fees; causes involving the clergy and churchwardens and court personnel; subtraction of church rates; prophaning the sabbath; and causes involving church repairs.
3. Other Matrimonial Causes include jactitation, nullity and spousals causes.

and other fees arising from church and court business, and they could apply for faculties to alter churches, erect pews or build vaults. Misbehaviour in church, pew disturbances and profaning the Sabbath could result in actions in the church court. The courts' competence over some crimes, such as witchcraft, declined with the frequency of prosecutions, but most of the attrition in jurisdiction was the result of aggression on the part of common law courts.

There were still many areas where jurisdiction overlapped, and a litigant might consider such factors as procedure, costs, punishment and powers of enforcement before choosing between the ecclesiastical and secular courts. Defamation, or the imputation of an ecclesiastical offence, such as fornication, was actionable in the church courts while slander, for which one might be awarded damages, could be heard only in the common law courts. Since much verbal abuse was probably of a mixed nature, litigants had a choice of courts. While it is difficult to compare the competing systems directly, it is possible to show that, despite the attacks levelled at them by common lawyers and others, the church courts could offer procedural advantages. Although the documents produced by civil procedure create problems for the historian (for instance, the judge gives no reason for his sentence and only the acts of court, rather than

records of arguments are preserved) the church courts and their procedure have found scholarly champions in recent years.<sup>13</sup> Ronald Marchant, in his work on York, points out some of the ways in which defendants benefited from church court procedure.<sup>14</sup> Instead of a general investigation, the case is built around the libel, and evidence and examination must pertain to the articles of the libel. The defendant is entitled to full legal representation and can compel witnesses to attend on his behalf. These witnesses are examined by impartial court personnel and their depositions, taken in private, remained sealed until all acts are published prior to concluding the case. At this point the defendant and his proctor have access to all documents in the case. Finally, because the case is heard before a judge rather than a jury, the judge does not act as a prosecutor. As long as the church courts could maintain these differences, they offered a positive alternative to justice in the common law courts.

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<sup>13</sup>Ronald A. Marchant, The Puritans and the Church Courts in the Diocese of York 1560-1642 (London: Longmans, 1960), pp. 5-6. The deputy registrar informed the ecclesiastical court commissioners that written arguments were never employed at Wells: PP 1831-2, xxiv, Report, p. 273.

<sup>14</sup>Ronald A. Marchant, The Church under the Law. Justice, Administration and Discipline in the Diocese of York 1560-1640 (Cambridge: At the University Press, 1969), p. 6.



Jurisdiction was not the only aspect of ecclesiastical law that remained fluid. The Reformation, the pressure of custom and parliamentary statutes culminated in the recodification of canon law in 1603. The fierce battle waged by Puritan common lawyers guaranteed the vitality of ecclesiastical law into the seventeenth century and the period of the courts' suspension. When the church courts were revived following the return of Charles II, they were faced with a diminution of powers. Structurally, they endured the paradox of the Toleration Act which abolished the religious uniformity upon which they depended. Two further acts exempted Dissenters from persecution in the church courts (1 W&M c.18; 10 Ann c.2). The legal modifications of our period, slow at first, then gaining tremendous momentum in the middle of the nineteenth century, were all negative ones. In 1787 Parliament imposed an eight-month statute of limitation on incontinence and church-brawling cases, a six-month limit on defamation cases, and abolished suits for antenuptial fornication against couples who subsequently married (27 Geo III c.44).<sup>15</sup> A statute of 1813

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<sup>15</sup>27 Geo 3 c.44, which forbade the initiation of defamation suits more than six months after the words were uttered, and which was intended to eliminate vengeful and harassing suits, seems to have had very little effect on litigation. From libels in which the time of defamation is recorded in detail we can calculate time lapsed between insult and prosecution; delayed prosecution was very rare, most plaintiffs arranging for a

discontinued the penalty of excommunication for contumacy or contempt (53 Geo III c.127). The number of tithe cases dropped drastically after the Tithe Commutation Act of 1836, depriving the courts of a major portion of their business. Jurisdiction over marriage was subject to continual redefinition. Suits for defamation were taken away in 1854, and in 1857 the courts lost their marriage and testamentary cases to the new Divorce and Probate courts (20 & 21 Vic cc.77,85). Three years later, the courts lost their jurisdiction over brawling in church (23&24 Vic cc.31,32). Perhaps the failure of the spiritual courts to take advantage of the opportunities to thoroughly reform themselves in the sixteenth century, or under Puritan pressure in the seventeenth century, proved their undoing. Unreformed, they lost ground in the eighteenth century and succumbed to the parliamentary onslaught of the next century.

This body of law which, as Ralph Houlbrooke has written, 'never stood still' was available in three major forms to practitioners and laymen.<sup>16</sup> The first was the

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citation to be served within a month or two. Under 21 Ja c.16, actions for slander had to be brought within two years: Burn, Ecclesiastical Law (1763), 1:482; but according to Philip Floyer, suits were usually brought in the ecclesiastical court in less than a year except in extraordinary circumstances: The Proctor's Practice in the Ecclesiastical Courts, As it is Regulated by the Rules of Practice now in Force (London, 1744), p. 94.

<sup>16</sup>Houlbrooke, Church Courts and the People, p. 20.

formulary, or precedent book, containing examples of acta to be consulted and copied. Most of the formularies that have been discovered date from before the end of the sixteenth century, when they begin to be replaced by the first of a series of influential and very similar handbooks on the practise of the church courts.<sup>17</sup>

Beginning with Clarke's treatise of 1596, these manuals were intended for use by proctors and combine a description of the ecclesiastical court system with rules of practise and detailed accounts of procedure. Later volumes, such as Floyer's Proctor's Practice or the third edition of Consett's Practice include new cases that illustrate points of law and procedure.<sup>18</sup> Together these handbooks form a monument to unchanging procedure, as valid, at most points, in 1596 as in 1844. Finally, in the eighteenth century a new form emerged, directed less at the proctors than at the clergyman, magistrate or

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<sup>17</sup>R.H. Helmholz, Marriage Litigation in Medieval England (Cambridge: At the University Press, 1974), Bibliography; W.A. Pemberton, 'Studies in the Ecclesiastical Court and Archdeaconry of Nottingham 1660-1689' (Ph.D. dissertation, University of Nottingham, 1952), p.48; Carson I.A. Ritchie, The Ecclesiastical Courts of York (Arbath: Herald Press, 1956), pp. 1-6.

<sup>18</sup>The second edition of the Proctor's Practice (1746) includes an introduction by Thomas Wright which concerns itself largely with techniques for avoiding excommunication and signification. Henry Consett, The Practice of the Spiritual or Ecclesiastical Courts, 3rd ed. (London, 1708). The first edition (1685) is exactly the same, save the series of cases at the end of the third edition.

parish official. Burn's Ecclesiastical Law, which ran through nine editions between 1763 and 1842, provided digests of legal information under alphabetical headings ('Bastardy', 'Penance') and probably proved indispensable to the litigious.<sup>19</sup> The long section on tithes was undoubtedly studied by parsons, and the fact that the section on wills remained the longest throughout its publication history testifies to the interest people took in testamentary matters.

We do not know whether the proctors in Wells consulted Floyer, nor have any formularies been discovered for the diocese. Yet the stable character of procedure and the unchanging form of acta indicate that the traditional models were well-known and widely used. Legal training reinforced this continuity of practise at Wells, where all proctors were notaries public but law degrees were probably less common than they had been in the fifteenth century.<sup>20</sup> Instead, these men received their legal education in court, as apprentices to their

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<sup>19</sup>Burn's Ecclesiastical Law, originally published in 1763, was reprinted in 1767 and 1775. The fourth edition (1781) is slightly revised, as is the fifth edition (1788). Simon Fraser, a barrister, provided notes and references to the sixth edition (1797) and published a corrected and expanded seventh edition (1809). The eighth edition (1824) was similarly expanded by Robert Philip Tyrwhitt of the Middle Temple. The ninth and final edition (1842) was extensively reworked by Robert Phillimore, a barrister and advocate in Doctors' Commons.

<sup>20</sup>Dunning, 'The Wells Consistory Court', p. 53.

fathers or uncles. For contrast, one need look no further than the nine editions of Burn and the increasingly extensive revisions required by new acts of Parliament.

If, after the activity of the Reformation, Parliament did not succeed in substantially altering the practise of the courts until the nineteenth century, its impact on the content of ecclesiastical law was profound. The death, however, was a slow one, as evinced by the continuing popularity of Burn's Ecclesiastical Law, the publication of a new practise handbook in the early 1830s and, of course, by the persistence of the courts meeting session after session at Wells, and elsewhere, even beyond 1850.<sup>21</sup>

### III. Organisation and Personnel

The diocesan court of Bath and Wells was at the center of a many-tiered system of ecclesiastical courts. It was the court of first instance for most causes, as well as being the venue for appeal from the archidiaconal

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<sup>21</sup>Law, Forms of Ecclesiastical Law, 2nd ed. (1844), an expanded version of the first edition (1831) contains a translation of Oughton and pieces of all the major works on ecclesiastical law since Clarke; DNB, s.v. 'Law, James T.' Law is described as 'late Special Commissary' on the title page of the second edition and his second edition may have been inspired by the flood of new proctors he had witnessed as special commissary at Wells between 1840 and 1844.

courts of Wells and Taunton and from some of the peculiar courts. Above it stood the courts of the Archbishop of Canterbury, particularly the Court of Arches, which heard appeals from the diocesan court. When the see was vacant, as in 1743, 1773-4 and 1802, the Metropolitan placed his Vicar General at the head of the consistory court.<sup>22</sup> When an archdeacon died, it was customary to remove causes in progress to the bishop's court.

Ideally, the episcopal court met once a week on Tuesdays during the four law terms of Hillary, Easter, Trinity and Michaelmas. In the early 1730s official court hours expanded from nine to eleven A.M. to nine to noon, and then to nine to two P.M. in the last twenty years of our period. By this time the archidiaconal court, which had met on Wednesday mornings until 1779, had effectively merged with the diocesan court and was meeting on Tuesdays.<sup>23</sup> The diocesan court met an average of thirty-three times a year until the mid-1770s, and then began eliminating sessions until it was meeting

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<sup>22</sup>The vacancies of 1824 and 1845 seem to have been too brief to necessitate this step.

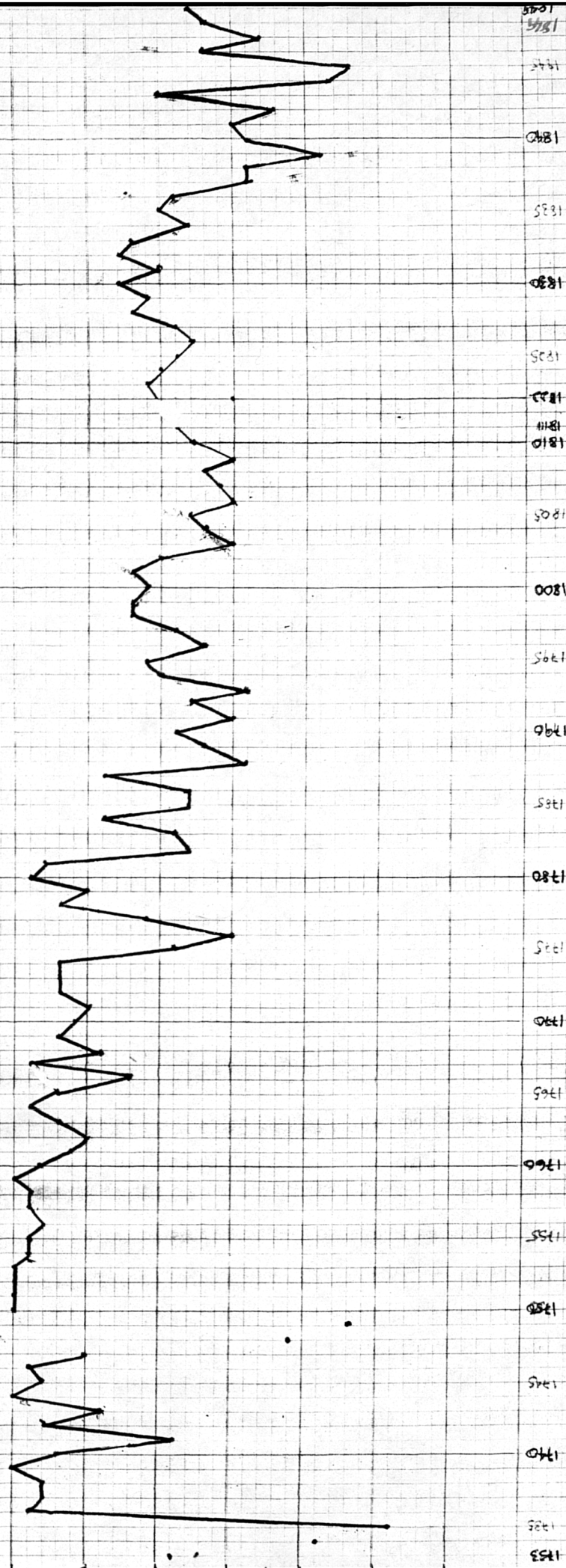
<sup>23</sup>The data on sittings are compiled from the Act books. Sittings were flexible, occurring on Thursdays, Fridays and Sundays as well as Wednesdays. In the fifteenth century, the archidiaconal courts of Bath, Taunton and Wells were held on Monday, Tuesday and Wednesday respectively: Dunning, 'The Wells Consistory Court', p. 49.

just over twenty-three times a year, on average, between 1790-1811 and 1822-1839. (See Table IIIC) In the final decade the average dropped to nineteen sessions per year. The random variation from year to year is more apparent when looking at the statistics of the archidiaconal court, which was still meeting an average of twenty-three times a year in the 1780s, but which contracted rapidly in the decade 1840-9 to an average of seven meetings per year. (See Table IIID) Much more sensitive to changes in the climate of litigiousness, the archdeacon's court might sit anywhere between one and thirty-three times a year.

The diminution in the volume of new causes entering the courts was not directly reflected by the subtraction of official sessions in either court. One hundred and sixty-two causes were commenced in the episcopal court in 1737; in each succeeding decade the yearly average shrunk until the court was hearing an average of twenty-six new causes per year in the first decade of the nineteenth century. (See Table IIIE) After a slight rise in the years 1822-1829, the yearly average declined again until it reached twelve causes per year in the last decade. Information for the archidiaconal court is spotty and does not lend itself to

TABLE III C.: SESSIONS PER YEAR IN THE EPISCOPAL COURT

1 box = 1 session

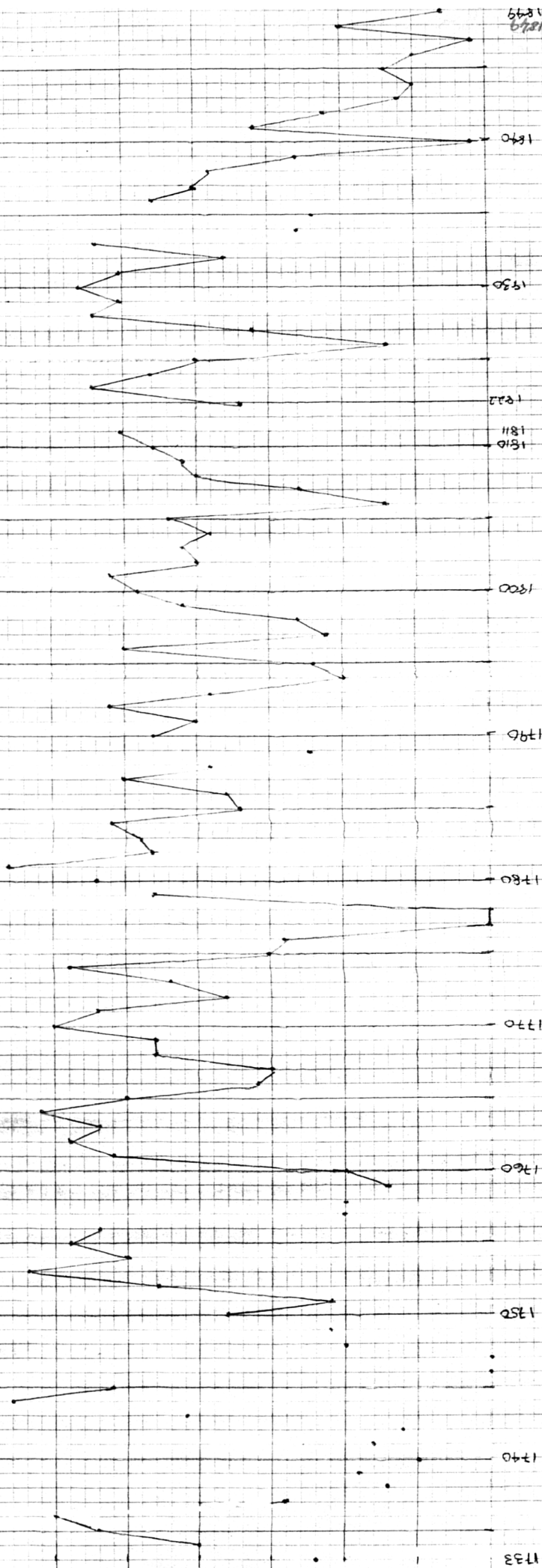


EPISCOPAL COURT: SESSIONS PER YEAR 1733-1849 FROM THE ACT BOOKS  
(UNCONNECTED POINTS REPRESENT YEARS FOR WHICH DATA ARE INCOMPLETE)



TABLE III D: SESSIONS PER YEAR IN THE ARCHIDIACONAL COURT

1 BOX = 1 SESSION

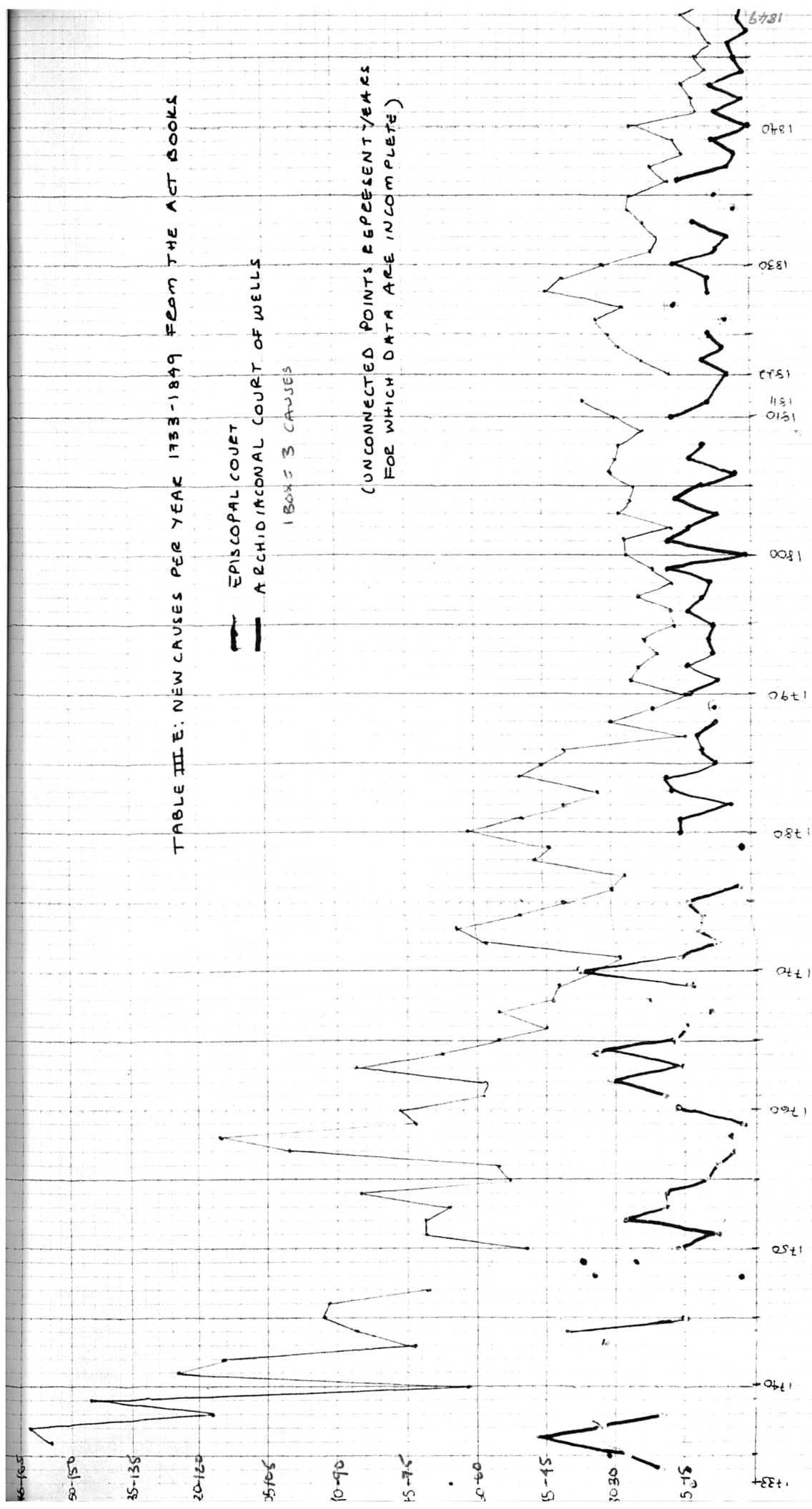


ARCHIDIACONAL COURT OF WELLS: SESSIONS PER YEAR 1733-1849 FROM THE ACT BOOKS  
(UNCONNECTED POINTS REPRESENT YEARS FOR WHICH DATA ARE INCOMPLETE)

TABLE III E: NEW CAUSES PER YEAR 1733-1849 FROM THE ACT BOOKS

— EPISCOPAL COURT  
 — ARCHIDIOCONAL COURT OF WELLS  
 1 BOX 3 CAUSES

(UNCONNECTED POINTS REPRESENT YEARS FOR WHICH DATA ARE INCOMPLETE)



comparison, beyond noting that the forty-six new causes heard in 1736 represent a peak for our period.<sup>24</sup>

In addition to the regular sessions analysed above, judges in the diocesan court made extensive use of adjournments and extra sessions to tackle lengthy or complicated causes, and it was in this way that they accommodated the large volume of business in the early eighteenth century. These meetings might be held anywhere from the local tavern to the Bishop's Palace or a proctor's office, but the most popular location was the dwelling house of the judge. Defendants cited to court, often travelling great distances to reach Wells on the appointed day (usually ten days from the date of the citation in the eighteenth century), were entitled to justice as long as they appeared before the judge at any time on the day of their citation. The houses of the judges and proctors must have been easy to locate, for there are many entries in the Act books describing causes commenced when defendants arrived at the judge's house after court hours. Summary fornication causes involving the birth of a bastard were invariably heard outside the cathedral, often on Saturdays, before a judge and a

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<sup>24</sup>Deficient years are even more common for the Act books of the archidiaconal courts. Though the yearly averages for each decade rise and fall, the court was hearing less than three new causes per year between 1840 and 1849; and there were no new causes at all in 1840 and 1847.

deputy registrar. Unmarried women appeared, begged pardon and were assigned public penance. It is unclear whether privacy was at issue: the houses of the surrogates were all close to the cathedral, and the obverse of their accessibility was that traffic in and out of them was probably closely watched. Young women, strange to the city, might be easily spotted. And meeting in the pub (where much cathedral business was transacted, according to Claver Morris) saved nothing but the expense of plenary procedure.<sup>25</sup>

Though court business was unmistakably declining, the activity of the Wells courts compares favourably with other dioceses. Parliamentary interest in the ecclesiastical courts--which they hoped to curtail or dismantle--produced a series of national statistics for the years 1824 through 1829 inclusive. (See Table IIIF) In the first three-year period, only four dioceses reported higher cause totals than Bath and Wells: Exeter (114 in the episcopal court, 105 in the remaining courts); Llandaff (127); Lichfield and Coventry (124 in the episcopal court, 24 in the remaining courts); and Chester (283 in the episcopal court, 70 in the archdeaconry of

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<sup>25</sup>[Claver Morris], The Diary of a West Country Physician A.D. 1684-1726, ed. Edmund Hobhouse (Rochester: Stanhope Press, 1934). Morris also made frequent use of the local inns and pubs as examining rooms.

TABLE IIIF

Causes in the Consistory Courts of Bath and Wells, 1824-1829

	episcopal court		Arch. Wells		Arch. Taunton		Peculiars	
	(a)	(b)	(a)	(b)	(a)	(b)	(a)	(b)
1824	28	28	6	6				
1825	28	30	10	9	2		18	
1826	33	33	5	5				
1827	27	27		16*				
1828	45	44	37	9			28	
1829	40	40		9				
total	201	202	58	54			46	

total causes 1824-1826: 130

total causes 1827-1829: 177

From PP 1828, xx, Return of Causes; PP 1831-2, xxiv, Report.

- (a) Parliamentary returns  
 (b) Figures from Act books

\*Incomplete data

Richmond).<sup>26</sup> Gloucester, with only one court, heard 104 new causes in this period; and F.S. Hockaday's work on this court indicates that it remained active past 1850.<sup>27</sup> In the second period, only Exeter (190) and Chester (309) had higher totals. Chester, the largest diocese in England, continued to hear a disproportionate number of testamentary causes (153 out of 259 causes in the episcopal court).<sup>28</sup> At Exeter, less than half the causes (93) came from the episcopal court, and a third of these can be accounted for by tithe suits with more than one defendant. Llandaff, with its single court, heard

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<sup>26</sup>James T. Law, son of the bishop of Bath and Wells and legal author, became chancellor of Lichfield in 1821: *DNB*, s.v. 'Law, James T.' George Henry Law, James's father, served as bishop of Chester 1812-24 before being translated to Bath and Wells. He has known in Chester as an 'active and practical bishop, personally visiting every parish in what was then a very extensive and laborious diocese, and doing much for the augmentation of the small livings, the improvement of the churches and parsonage-house, and the restoration of the cathedral'. He brought his policy of activism with him to Bath and Wells. *DNB*, s.v. 'Law, George Henry.' James T. Law also became the Commissary to the Archdeacon of Richmond in 1824, so the energetic Law influence may have been spread over three dioceses in this period (Chester, Lichfield, Bath and Wells). *DNB*, s.v. 'Law, James T.'

<sup>27</sup>F.S. Hockaday, 'The Consistory Court of the Diocese of Gloucester', *Transactions of the Bristol and Gloucestershire Archaeological Society* 46(1924): 195-287. Judging from the dates of documents Hockaday cites, the court was still sitting after 1850.

<sup>28</sup>On Chester: PP 1831-2, xxiv, *Report*, p. 175. Courts specialising in testamentary matters, such as the Prerogative Courts of Canterbury and York, continued to hear large numbers of causes in this period.

113 new causes between 1827 and 1829, but here, too, a multiple tithe action has inflated the figure. Of the thirty diocesan courts listed in the later return, three heard no causes and an additional fifteen heard ten or less each year between 1827 and 1829. Only two of the twenty-four courts listed for the earlier period heard no causes, and eight heard ten or less per year.<sup>29</sup>

Litigation in which payment arose 'from ancient and accustomed Fees, which are very small' was not financially attractive to court officials.<sup>30</sup> In many dioceses, judges and registrars had ceased to collect their court fees. Even in a busy diocese such as Exeter the judge earned no more than £10, while the registrar and his deputy shared less than £30 each year.<sup>31</sup> Court structures persisted mainly to transact non-contentious testamentary business, at least until this lucrative jurisdiction was amputated in 1857. Bath

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<sup>29</sup>Of the six courts that did not report, three heard ten causes or less in the latter period, two entertained more than ten causes and one was defunct: PP 1831-2, xxiv, Report, passim.

<sup>30</sup>PP 1831-2, xxiv, Report, p. 272.

<sup>31</sup>At the Wells episcopal court the judge was paid £10 5s. 2d. and the registrar and his deputy shared £47 15s. 6d. in court fees. The comparable fees in the archidiaconal court were £1 17s. 3d. and £4 11s. 9d. The remaining courts contributed a few more shillings: PP 1828, xx, Returns of Causes, passim. According to the surrogate of the Wells court, the Vicar General and Official Principal collected all judicial fees: PP 1831-2, xxiv, Report, p. 272.

and Wells, despite its lively court, did not have a population sufficient to generate a vast number of probates or administrations and eight dioceses, including Chester and Exeter, transacted a larger volume of testamentary business. While many dioceses were ceasing to entertain causes in their consistory courts, Wells in particular and the West County in general (Bath and Wells, Wales, Gloucestershire, Exeter) remained centres of ecclesiastical adjudication.<sup>32</sup>

At the head of the diocesan court system stood the bishop. The bishop was entitled to hear causes in which clergymen appeared as defendants, and in the early years of our period Bishop Wynne repeatedly summoned the court to the Great Hall of his palace to hear a protracted cause of clerical incest. When the Vicar General and Official Principal, Thomas Eyre, was excommunicated in a jurisdictional dispute in 1738, Bishop Wynne officiated

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<sup>32</sup>It is interesting to note that bishops were translated among these dioceses. Bishop Wynne first served at St. Asaph, Bishops Willes and Moss held Saint David's before moving to Bath and Wells and Richard Beadon was first bishop of Gloucester. The Honourable Richard Bagot was translated from a judicially inactive diocese, Oxford, but the Bishop of Gloucester and Bristol administered his diocese when he became deranged. *DNB*, s.v. 'Wynne, John,' 'Moss, Charles,' 'Beadon, Richard,' 'Law, George Henry,' and 'Bagot, Richard.' For Willes: Alan Valentine, *The British Establishment 1760-1784*, 2 vols. (Norman: University of Oklahoma Press, 1970), 2:931.



at court for the entire Easter term.<sup>33</sup> This, however, marked the end of the traditional judicial role of the bishop, already much truncated since the days of Bishop Lake (1616-26) who seems to have personally conducted the episcopal court during his reign.<sup>34</sup> After 1738, the bishop withdrew from active participation in the administration of justice, exercising his influence, when possible, through the appointment of the Official Principal and the archdeacons.

In the sixteenth century Vicars General and Officials Principal (the offices were unfailingly combined in our period) were usually appointed by the bishop they served and were easily removed from office when the see became vacant.<sup>35</sup> This custom may have lapsed when the appointment became less political and more essential to maintaining administrative continuity, or it may simply have succumbed to the pressure of men unsatisfied with revocable commissions. The controver-

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<sup>33</sup>In the report of the 1883 Commission, Bath and Wells is not included among the dioceses in which the bishop reserved the right to hear causes in person, but it is not clear whether this indicates an official change of policy, and, if so, when it occurred. PP 1883, xxiv, Report, p. 698. The incest cause, Browne v. Bean and Browne v. Pysing, may be followed in the Act books of 1736-39: D/D/Ca 415, 416, 417, 418. Bishop Wynne's session in court is recorded in D/D/Ca 417.

<sup>34</sup>Hunt, The Somerset Diocese, p. 197.

<sup>35</sup>Houlbrooke, Church Courts and the People, p. 24.

sial Thomas Eyre returned to office after his excommunication, and continued there until 1753, his reign only briefly interrupted by the vacancy of the see in 1743. Edward Willes, Ll.B., the Rev. Charles Moss, D.D., the Rev. Richard Beadon, M.A., and the Rev. William Towry Law, M.A., all appointed by their fathers, similarly held office under two bishops.<sup>36</sup> Eyre, however, pursued his judicial activities energetically, appearing at most sessions from 1733 to 1735, in 1741, and again in 1746 and 1747. He presided at other times until his death, alternating terms or sessions with surrogates. Edmund Aubery, Ll.D., who acted as judge during his brief term succeeding Eyre as Official Principal, continued for many

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<sup>36</sup>Nepotism was common even under such zealous bishops as George Henry Law. Bishop Willes made extensive use of his powers of appointment. His son, William, was Archdeacon of Wells 1767-1815 and two sons-in-law held the post prior to William. Henry Willes became Precentor of Wells (1757-72) after holding the deanship for two years. William, the future Archdeacon of Wells, was dean from 1758 to 1760 and Archdeacon of Taunton from 1760 to 1767. Charles Willes kept the deanship in the family from 1764 to 1783. Bishop Moss appointed his son subdean of Wells in 1774 when he was only eleven years old. Other preferments followed and he died bishop of Oxford. It was said of Bishop Beadon that 'he did not neglect the opportunities which his bishopric afforded him of forwarding the interests of his family'. His son, John Watson, became chancellor and a nephew, Frederick, held several livings and cathedral offices until his death in 1879. Law, though regarded as a model bishop, made a son, Henry, and a nephew, William Towry Law, chancellors; a second son became Special Commissary and a third was Treasurer of Wells. Henry Law held many Somerset livings and was Archdeacon of Wells from 1826 to 1862. Only three chancellors, or Officials Principal, did not serve under two bishops: Edward Simpson Ll.D.

years afterwards as a surrogate. Moss appeared in court only a handful of times throughout his tenure, and his predecessor Willes even less frequently. Beadon and his successors, Henry and William Towry Law, did not appear at all.<sup>37</sup> The trend, then, was toward a withdrawal from the daily administration of justice, first by the bishop, then by his Official Principal.

Instead, the courts were presided over by surrogates appointed by the Officials Principal. Every surrogate in our period was an ordained minister, most held the M.A. degree and a few were bachelors or doctors of divinity. Training in law was not required, but at least six of the more than thirty surrogates who officiated in the consistory court during our period held law degrees.<sup>38</sup> (Legal knowledge was not strictly

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(1738-1741); Edmund Aubery, Ll.D. (1753); and Henry Law (1826-39). DNB, s.v. 'Moss, Charles,' 'Beadon, Richard,' 'Law, George Henry'; John LeNeve, Fasti Ecclesiae Anglicanae 1541-1857, vol. 5, Bath and Wells Diocese, compiled by Joyce M. Horn and Derrick Sherwin Bailey (University of London: Institute of Historical Research, 1979).

<sup>37</sup>Richard Beadon may have sat in court in the period prior to 1822 for which we have no Act books, but this is unlikely.

<sup>38</sup>The Rev. John Richards, Ll.B.; the Rev. Edmund Aubery, Ll.D.; the Rev. Thomas Camplin, Ll.D.; the Rev. Edmund Lovell, Ll.D.; the Rev. Edward Foster, Ll.B. and the Rev. George Trevelyan, Ll.B. The degrees of all but Richards are listed in Fasti as in ecclesiastical law (i.e., D.C.L., B.C.L.), but this is not the way the surrogates were described in court records. Four of the surrogates officiated in the eighteenth century; Foster and Trevelyan served in the early decades of the nineteenth century.

necessary, as the judge was advised by the proctors on points of law). Prior to 1750, when he frequently presided, the Official Principal could reasonably be assumed to set the style of the court, determining a wide range of procedural matters, from the rapidity of excommunication to the method of pursuing ex officio causes. Active surrogates served for short periods, rarely more than two or three years, and probably did not have the opportunity to put their stamp on court proceedings. Later, however, as surrogates claimed a larger share of judicial responsibility, their periods of activity increased until particular judges, such as the Rev. John Turner, M.A., (active 1780 to sometime after 1812) and the Rev. Peter Lewis Parfitt, M.A., (active 1828-37 and 1840 to beyond 1850) ran the court singlehandedly. For litigants, this meant an unprecedented continuity; previously a case that took more than one session to resolve might be heard by several judges. For court personnel, it meant familiarity engendered by doing business with the same people day after day, a familiarity not infrequently reflected in the blood and marital relations between judges, deputy registrars and proctors.

While the judge determined the style of the court, its content, or the causes that came to be recorded in the Act books, was the responsibility of the registrar. The registrar, a notary public, witnessed and recorded

all acts of court, examined witnesses and through his control over the citation process screened all litigation before it reached court, thus eliminating trivial or insubstantial causes.<sup>39</sup> In Somerset the work of the registrar was done by deputies who had served as proctors, and it is their names that appear on the citations of the consistory court. Reversionary life patents were used in eighteenth-century Somerset as they were in many other dioceses to make the post of registrar hereditary.<sup>40</sup>

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<sup>39</sup>See also canon 134. William Parfitt was still entering all acts of court during each session (which were later transcribed under his supervision) and personally examining witnesses. He informed the commissioners that though a legal education was not required of an examiner, he felt it was necessary. PP 1831-2, xxiv, Report, pp.273, 274.

<sup>40</sup>PP 1851, xlii, Abstract or Return of the Names of all Persons who have been Appointed or Nominated in Reversion to any Office in the Ecclesiastical Courts..., pp. 508-9. According to this return, registrars of the episcopal and archidiaconal courts were nominated in reversion. This enabled Bishop Willes to provide for his relative, Francis, who served as registrar of both Wells courts. He was appointed to the archidiaconal registrarship by the archdeacon, William Willes. It also enabled five-year-olds (William Frederick Beadon, appointed episcopal registrar in 1816 by Bishop Beadon) and women (Harriot Anne Cooper, appointed registrar of the archidiaconal court of Taunton in 1807, aged twenty) to hold the rights to the office. The registrarship was at the disposal of the bishop and tended to be a sinecure for the bishop's family. (See also Marshall, George Hooper, p. 184, for an earlier example of this.) Other dioceses listed in the return include Exeter, Gloucester (the chancellor was also appointed in reversion there), London, Norwich, Oxford, Petersborough, Worcester and York; Canterbury had many reversionary offices (pp. 508-18). The registrarship and deputy registrarship of the Archdeaconry of Salisbury were monopolised by two families from the early years of the seventeenth century

Of the seventeen deputy registrars and actuaries, or temporary registrars, whose signatures appear in the Act books under study, four belonged to the Parfitt family, two bore the surname of Andrews and four others shared surnames with proctors.

The proctors, or lawyers, exhibited many of the attributes of an increasingly successful professional group. Locally based, they obtained their qualifications through apprenticeship in the diocesan registry and in court, and were notaries public rather than attorneys. Independent practise might be prefaced by several years of sharing causes with a senior proctor, often a family member.<sup>41</sup> The family ties, both within the profession and between the proctors and other court personnel, have already been mentioned; in addition, many prominent proctorial families were tied, by blood or marriage, to the Wells ecclesiastical administration, to the county legal establishment or to local commercial enterprises.<sup>42</sup> Of

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to the Civil War: Ingram, 'Ecclesiastical Justice in Wiltshire', p. 52.

<sup>41</sup>John Woollams was already apprenticed in 1769, aged 16; one of his clients, when appealing to the Court of Arches five years later, blamed his loss on Woollams's lack of experience: *Wills v. Williams*, D/D/C [1769]; *Payne v. Mogford*, D/D/C (1774). Some proctors do not seem to have been allowed to take cases on their own responsibility until several years after they had shared them with a senior colleague. See, for instance, the career of John Conway recorded in the Act books from 1788.

<sup>42</sup>For the Parfitts, Tusons and Prats, see below.

thirty-three proctors mentioned in the Act books between 1733 and 1850, eighteen shared a surname with at least one other proctor. The Act books also provide a striking example of endogamy. When George Mattock, proctor and acting registrar, died in 1735, his widow Martha married Daniel Gell, another proctor, perhaps bringing Mattock's practise with her in marriage. By 1739, Martha Gell was in court asking for a divorce on the ground of cruelty, and she was represented by Charles Browne, the son of Hugh Browne, a proctor in the same court.<sup>43</sup> Mobility, too, is documented in the Act books. When George Tuson's

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Ties to the diocesan administration were not new in our period. When Bishop Hooper came to Bath and Wells he found the clerical establishment dominated by the Creighton family and its head, Robert, the precentor of Wells. Creighton's son-in-law, Henry Layng, was already subdean and Hooper made him Archdeacon of Wells in order to win him over: Marshall, George Hooper, p. 119. George Layng served as both a proctor and a deputy registrar in the early part of our period. (He lived in Chamberlain St., next door to a Mrs. Parfitt, and his wife was attended in childbirth in 1762 by Benjamin Pulsford, surgeon and midwife and a man of "a very considerable fortune or estate". A Pulsford became a proctor in the nineteenth century: Joel J. Gold. 'The Showdown on Chamberlain Street: Wells, 1762', Eighteenth-Century Life 1 (March 1975):52-53). While some families advanced through the law or the Church, others may have tried finance: Robert Gutch of Wells was a partner in the Bath City Bank in the 1770s and 1780s, a period when a man of the same name practised in Wells Court: Neale, Bath, p. 261.

<sup>43</sup>See also canons 129, 133. In 1737 Martha Gell was sued by one of her deceased husband's creditors: White v. Gell otherwise Mattock, D/D/Ca 415. In the divorce proceeding (Gell v. Gell, D/D/Ca 418) Martha Gell was allowed £20 per year in alimony, to be paid weekly during the suit, a handsome sum in line with her designation as the wife of a gentleman.

son entered the proctorial ranks in 1775 he was already identified as a 'Gentleman', an increasingly popular designation for men who had previously been known by their profession as well. Twenty-seven years later, Edward acted for his retired father in applying for a faculty to build a family pew and vault in Northover parish, as concrete a symbol of success as can be imagined in the world of the small parish.<sup>44</sup>

By the end of our period, the local proctorial families were barely represented in court. Though the Parfitts were still active in other aspects of ecclesiastical administration, and their last representative, Edward, came to the courts--as an attorney of King's Bench, Common Pleas and Exchequer, and a solicitor of the High Court of Chancery--in 1833, he rapidly graduated to deputy registrar.<sup>45</sup> Of the thirteen proctors practising in the period 1835 to 1850, only Edward Parfitt and Thomas Conway Robins shared surnames with proctors from

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<sup>44</sup>Tuson v. Northover parish, D/D/Ca 439. The Tusons were numbered among Northover's gentry in the 1870s: J. Stevens Cox, ed, Ilchester References in 16th, 17th, 18th and 19th Century Topographical Writings and Early Directories, Ilchester and District Occasional Papers, no. 16 (Guernsey: The Toucan Press, 1979), p. 171. Edward was probably also an attorney. The enclosure award for the outparish of St. Cuthbert's, Wells, included land with a manor, sold for £780 to Edward Tuson, 'a Wells attorney who was a Bishop's Steward'. (He had owned the neighbouring farm).-- Athill, Old Mendip, p. 42.

<sup>45</sup>D/D/Ca 441. Edward Parfitt's residence is given as Glastonbury.



the first quarter of the century. The Wells proctors were not formed into a closed corporation, as the proctors of Elizabethan York were, though their numbers were limited by the Official Principal, who admitted only those proctors he judged qualified. Once admitted, they were free to practise in any court in the diocese.<sup>46</sup> For a time a small group of local families managed to defend and even improve their social and professional position through their close association with the church courts. Nevertheless, they proved vulnerable, in the long run, to both success and the competition of outsiders.

The number of practising proctors varied tremendously over time. The large workload of the early decades of our period was handled by between three and five proctors, but by the mid-1760s only two proctors, Ralph Sutton and George Tuson, practised in the episcopal court. After Sutton's death in 1775, the court continued to entertain new causes for three sessions before Tuson was joined by a 'clerk in the Register's Office' and by his own son, Edward.<sup>47</sup> It is from the 1780s onward that the number of proctors rises, though many of the newly admitted proctors practised only intermittently

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<sup>46</sup>Ritchie, Ecclesiastical Courts of York, pp.4-5, PP 1831-2, xxiv, Report, p.273.

<sup>47</sup>D/D/Ca 434.

before disappearing from the Act books. Ten proctors, all from Queen's Bench, were inducted between 1835 and 1847, in addition to the three or four already practising in 1835.<sup>48</sup> While many of these proctors made only fleeting appearances at the consistory court, it is difficult to explain the expansion of personnel at a time of drastically declining business. Their arrival in Somerset may be evidence of a glut of attorneys at Queen's Bench, a decline in local family control of the profession (yet many proctorial families had ties to the common-law establishment) and of declining opportunities for lawyers prepared to practise in ecclesiastical courts elsewhere.<sup>49</sup> In St. David's diocese the consistory

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<sup>48</sup>pp 1843, xl, Returns of the Number of Proctors now practising in each of the Ecclesiastical Courts...of Names of Judges, Registrars and Deputy Registrars in Courts having Right to grant Probates...with the Salaries, Fees and Emoluments of such Persons...for 1842. This return lists thirteen proctors at Wells, who were free to practise in all the courts in the diocese, all of whom were also attorneys or solicitors. Two had been admitted in the previous three years. The archidiaconal court of Taunton employed three proctors who were also attorneys.

<sup>49</sup>Somerset, according to the Census of 1851, was well-supplied with solicitors. The 2% of the nation's population that resided in the county was served by 3% of the nation's solicitors. Both the Tusons and the Prats had solicitors in the family. A George Tuson contemporary with Edward, the proctor, was listed as an attorney and principal inhabitant of Ilchester in 1794 and Henry Hunt referred to the attorney Henry Tuson as 'the most respectable person in the town' in the 1820s: Cox, ed, Ilchester References, p.161; Hunt, Memoirs, 1:438. Tuson held many posts, including county clerk and clerk to the Ilchester and District Turnpike Trust.:

court, which used to meet regularly in each of the four archdeaconries, had shed three of its local courts by the 1830s. Walter Thomas Morgan, in his thesis on the St. David's consistory court, suggests that as proctorial practise became less remunerative, the courts became understaffed and eventually ceased to operate. Yet he also notes that proctors actively opposed the admission of qualified attorneys who were not certified notaries public, and defied judges who wished to admit them.<sup>50</sup> There is no evidence of such defiance at Wells, and the flood of attorneys, many without the traditional

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J. Stevens Cox, ed, An Ilchester Directory of 1840, Ilchester and District Occasional Papers, no. 5 (Guernsey: The Toucan Press, 1972), p. 113. Proctors, whether attornies or not, did not shy away from litigating in the common law courts. See, for example, Q/SI 450 (Epiphany, 1830) and ASSI 24/40 (Winter, 1741): process book, for the very common involvements, on one side or the other, in assaults. The Tusons were particularly litigious. The elder George Tuson confessed to assault and was fined 1s. (ASSI 24/41 (Winter, 1751): process book); sixteen years later he, or a relative, had the windows of his summerhouse broken and his wife assaulted by a local mason (Q/SI 387 (Wells, 1767)); and the attorney George Baily Tuson was libelled by a Wells gentleman, Henry White Parsons, over a suit Tuson had brought against him at King's Bench. Parsons called Tuson a 'dastardly cowardly poltroon and liar' and tried to challenge him to a duel (ASSI 25/14/23 and 24/44 (Lent, 1814)).

<sup>50</sup>Walter Thomas Morgan, 'The Consistory Courts of the Diocese of St. David's, 1660-1858: studies of the records of the courts illustrative of their work and practice' (M.A. dissertation, University of Wales, 1962), pp. 29, 26; see also PP 1831-2; xxiv, Report, pp. 288, 290, 292. In Somerset attorneys could practice only if first admitted as proctors (p. 273).

qualifications and crucial ecclesiastical experience, points to the end of close control over the profession by its members.

At the bottom of the court system come the apparitors. Traditionally, their duties had been to serve citations and other writs of court on people in their homes, and to inform on the local population. It was this last function, and the fact that citations were paid for by those cited, that attracted 'universal odium' and that led Ritchie to write that the apparitor 'must be prepared to forego the good opinion of his fellow men; his office was probably the most unpopular calling in England, not excepting the hangman's.'<sup>51</sup> Accusations of bribery and spying, curses, even physical violence were commonly addressed to the apparitors of Colchester and Essex in the sixteenth century. Popular resentment had its counterpart in official suspicion, for queries about the malpractices of apparitors are included in the Visitation Articles of these archdeaconries.<sup>52</sup> The canons of 1603 sought to limit the all too common abuses

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<sup>51</sup>Ralph Houlbrooke, 'The decline of ecclesiastical jurisdiction under the Tudors' in Continuity and Change: Personnel and Administration of the Church of England 1500-1642, ed. Rosemary O'Day and Felicity Heal (Leicester: University Press, 1976), p. 206; Ritchie, Ecclesiastical Courts of York, p. 44.

<sup>52</sup>The Reverend W.J. Pressey, 'The Apparitor in Essex', Essex Review 46(1937): 24-7.

of the office by demanding an oath and bond from each apparitor, and judges, who appointed the apparitors, might keep a close watch on the citations emanating from their courts and suspend an apparitor for misbehaviour (Canon 138). In the seventeenth century the laity continued to complain of abuses, but they were also able to use the apparitors, who were recognised as peripatetic informers, to air their grievances. There is evidence, however, that by the eighteenth century the role of the apparitor had changed and that consequently popular attitudes had shifted.<sup>53</sup>

The apparitors operating out of Wells (and the personnel for the two courts was often identical) were organised on geographical lines. Most apparitors were responsible for one or two deaneries, but they might cover larger areas in certain circumstances, as when John Millard, already apparitor for Axbridge and Paulet, took an additional deanery in 1762. Millard was 'sworn in open court Apparitor for the Deanery of Cary being assigned him by Mr Archdeacon upon the surrender of Daniel Broderip the apparitor thereof who is now antient and infirm he and sd Millard agreeing to pay him the sd

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<sup>53</sup>For the seventeenth century, see Quaife, Wanton Wenches, pp. 188-190. In neighbouring Gloucestershire, official attention shifted from dishonest apparitors to corrupt proctors. See the list of court rules drawn up by the chancellor of the diocese in 1697 reprinted in Hockaday, 'Consistory Court of Gloucester', pp. 280-7.

Broderip half the perquisites arising from the sd deanery during his life.<sup>54</sup> The fees apparitors collected from recipients are not recorded, though Quaife notes that it commonly cost 8d. to receive a copy of a citation in seventeenth-century Somerset.<sup>55</sup> Apparitors were also paid by the losing party in a cause according to the distance they had travelled. A bill of costs from 1788 records a charge of 15s. to send an apparitor to Fivehead; the rate in the nineteenth century was generally two miles to the shilling.<sup>56</sup>

For most, apparitorship had become a part-time job, a supplementary source of income.<sup>57</sup> Apparitors no longer

<sup>54</sup>D/D/Ca 463, 25 May 1758 and 5 May 1762.

<sup>55</sup>Quaife, *Wanton Wenches*, p. 197; in Gloucestershire the cost was 6d., but no date is specified--a frequent omission in Hockaday's work. Hockaday, 'Consistory Court of Gloucester', p. 230.

<sup>56</sup>Apparitors' fees differed widely from diocese to diocese. In Bangor, where few causes had been heard in recent years, apparitors were paid 2d. per mile for the delivery of a decree. York fees were the same and in Sarum, a quiet diocese, an apparitor received 2d. plus 2d. per mile in each direction. Peterborough apparitors earned 1s. per mile within four miles of the cathedral, and considerably more for longer distances. They also received 5s. for each citation (called a citation *viis et modis*) nailed to a church door. In Canterbury local citations cost 5s. and apparitors travelling outside the city could expect 1s. per mile. In Chester, where apparitors were kept very busy, they earned 6d. per mile in each direction. Carlisle fees were 6d. per mile plus 2s. 6d. per citation. PP 1831-2, xxiv, *Report*, pp. 431-531.

<sup>57</sup>The Apparitor-General of the episcopal court was earning just over £50 per year between 1825 and

spent time in court; instead, they dealt directly with proctors, perhaps at their chambers, receiving instructions for citations and certifying their delivery. There is nothing to indicate the close connection with judges that prevailed in Elizabethan Gloucestershire, where the apparitors acted as go-betweens for the Chancellor, arranging and collecting his bribes.<sup>58</sup> Many apparitors, including the Broderip mentioned above, served for periods of thirty years or more. These men would not have been able to reconcile the demands of their other occupations with either the extensive travelling necessary to spying or with an hostile treatment of the public.<sup>59</sup> Innkeepers and cordwainers could ill-afford

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1828 and his unnamed colleagues in the inferior courts protested, in their returns, that though they were entitled to the same fees as Thomas Parfitt, they had not been paid at all in recent years. The Apparitor-General of Taunton was collecting £14 per year at the same time. The 1s. due to the Apparitor-General on the probate of each will had been dropped, excepts on wills proved at Visitation. This money probably went to the working apparitors. PP 1830, xix, Returns Respecting the Jurisdiction, Records, Emoluments and Fees of the Ecclesiastical Courts, pp. 188-90; 297. Apparitors-general were well-paid by the mid-eighteenth century. George Champion, who worked as an apparitor prior to promotion, was already being described as a substantial householder in 1752 when he was indicted for refusing to take up his appointment, along with Thomas Conway, as an Overseer of the Liberty of St. Andrews, Wells: Q/SI 372 (Bridgewater, 1752).

<sup>58</sup>F. Douglas Price, 'An Elizabethan Church Official--Thomas Powell, Chancellor of Gloucester Diocese', Church Quarterly Review 128(1939):108.

<sup>59</sup>Daniel Broderip, Edward Trent, William Coles,

to alienate their customers by reporting their misdemeanours or by blackmailing them. The decline of correction business, traditionally instigated by the spying apparitor, is additional evidence of the circumscription of whatever informing powers the apparitors might have had. The majority of ex officio causes were openly promoted either by interested parties such as churchwardens or by neighbors who, in the eighteenth and nineteenth centuries, willingly acted as informers.<sup>60</sup>

The controversy aroused by apparitors in earlier periods is entirely lacking after 1733. Resistance came, not from ordinary citizens cited to answer for their crimes, but from churchwardens who refused to pay for the delivery of official notices. In 1778 George Dyer, the Apparitor General, took several churchwardens to court for withholding a customary payment for the delivery of

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John Bowell, John Maker, John Williams and John Elems appear in the Act books for stretches of thirty years or more. John Maker, for instance, was an innholder and a cordwainer as well as being an apparitor. Maker's mother was sued by one of his creditors, a wine and spirit merchant, after his death: *Berryman v. Payne*, D/D/Ca 443 (1847). John Bowell was a Wells tailor, Edward Merrick is described as a 'Writer'; and Edward Perkins was a yeoman of West Horrington: *Gould v. Pope*, D/D/Ca 474 (1848). The apparitors also came from families otherwise entrenched in the ecclesiastical establishment: John Broderip, who had been the organist at Wells Cathedral, became the sub-treasurer of the Cathedral in 1769, seven years after Daniel retired: Watson, Chronological History, p. 168.

<sup>60</sup>Ritchie, Ecclesiastical Courts of York, p. 45.



His Majesty's form of prayer on the occasion of 'the safe delivery of Her Majesty and Happy Birth of a Princess' in 1777, and for the public feast that followed in 1778.

His libel stated

That as well of right and Law as also by Prescription and Custom for time beyond the Memory of Man there has been paid by the churchwarden of each and every Parish throughout the whole diocese...to the Apparitor General...of the Consistorial Episcopal Court...for delivering to the churchwardens of each...Parish...for each and every form of Prayer appointed by his Majesty to be used in all Churches and Chapels with this Realm the sum of one shilling and six pence of lawful money of Great Britain.<sup>61</sup>

At stake was a large portion of the apparitors' income.

'The circumstances of a general fast or a general thanksgiving...in a large diocese', as the Commissary of the Archbishop of York testified, 'puts a considerable sum into the pocket of the apparitor, from the distribution of the form in every parish'.<sup>62</sup> Whether the churchwardens were refusing out of a principled opposition to the King or from stinginess, it illustrates the evolution of the office from one involving an almost criminal initiative to a purely service function, sustained by deliveries of official messages. Surely the fecund Victoria would keep her apparitors busy enough. Not even a weak or absent bishop, whose lack of super-

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<sup>61</sup>Champion v. Dyer, D/D/C (1778).

<sup>62</sup>pp 1831-2, xxiv, Report, p. 133. Visitation was the major source of income for an apparitor.

vision could cause 'pervasive rot' to the courts of sixteenth-century Norwich and Gloucester, could stimulate as much as an accusation against the now uncontroversial apparitors.<sup>63</sup>

Although the outline of the court strongly resembled that of its predecessors, encompassing the same offices and many of the same duties, there were some important differences. The direct influence of the bishop had declined as Officials Principal remained in office after vacancy, and the withdrawal of both bishops and Officials Principal from daily court activity left more power in the hands of their surrogates. Even an active bishop, intimately concerned with the affairs of his ecclesiastical inferiors, might find it difficult to penetrate the protective wall thrown up by administrators who chose to ignore his recommendations.<sup>64</sup> The

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<sup>63</sup>Houlbrooke, Church Courts and the People, pp. 52-3. The disabilities of the bishop could have been a problem at Somerset where Bishops Beadon (1802-24). Law (1824-45) and Bagot (1845-54) succumbed to 'temporary mental derangement', (DNB, s.v. 'Bagot, Richard'; the see was administered by the Bishop of Gloucester and Bristol); age (Beadon was 'rendered incapable of discharging his episcopal duties by the infirmities of age', DNB, s.v. 'Beadon, Richard'); or senility (Law died 'after a gradual decay of mind and body, which had for some years prevented him from performing his duties', DNB, s.v. 'Law, George Henry'. This time the see was administered by the Bishop of Salisbury, Fasti, p. 4) Yet in an era of judicial autonomy, the incapacity of the bishop might have little noticeable effect on the church courts.

<sup>64</sup>Robert Peters, 'The Administration of the Archdeaconry of St. Albans, 1580-1625', Journal of

registrar, too, ceased to play an active role, surrendering his duties and no doubt his influence to his deputies. The proctors, deputy registrars and surrogates were drawn together by the ties of kinship and of daily business and were able to administer their courts independently of changes in the episcopal hierarchy.<sup>65</sup> This had its advantages, as Helmholtz has pointed out in connection with medieval marriage litigation: 'The matter cannot be absolutely proved, but it seems reasonable to suggest that the familiarity which must have grown up between these lawyers and the judges worked for speed and fairness in the handling of marriage litigation. Men who worked together constantly and who were not tied to rigid rules of procedure...could more

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Ecclesiastical History 13(1962): 61-75. Peters uses the correspondence of the bishop of London with the officials of the archdeaconry of St. Albans to illustrate this particular point. The obstacles posed by entrenched personnel were not new and many have commented on the immunity of court officials to even large political and religious upheavals. For a Reformation example: F. Douglas Price, 'Gloucester Diocese under Bishop Hooper 1551-3', Transactions of the Bristol and Gloucestershire Archaeological Society 60(1938): 68-9. The people of Gloucester continued to go to the diocesan registry as late as 1659 with their wills, and the same surrogate presided in the Gloucester court in 1661 as in 1649: Hockaday, 'Consistory Court of Gloucester', pp. 200-1.

<sup>65</sup>For examples of kinship ties between personnel in the consistory courts of London, St. David's (at Haverfordwest), the Dean and Chapter of St. Paul's Norwich and Chester (where the deputy registrar had two sons who practised as proctors and a son-in-law acting as surrogate): PP 1831-2, xxiv, Report, pp. 194; 290; 206; 215; 175; 187.

easily move cases through the courts'.<sup>66</sup> Yet it also fostered a decline in standards, for surrogates had no special legal training and after Edward Willes left office in 1773, Officials Principal barely met the canonical qualifications.<sup>67</sup> Proctors, too, were untrained in ecclesiastical law, and they did not have trained advocates to consult as proctors in London did.

Worse perhaps than lapses in canonical qualifications was the concentration of power in the hands of a small Wells elite, and even in the hands of a single family. When the Rev. Peter Lewis Parfitt began to act as surrogate in 1827, he came to a court in which three other Parfitts had acted as proctors or deputy registrars since 1760, and in which a fourth held the office of Apparitor General. Thanks once again to the reforming zeal of Parliament, which began to entertain the idea of consolidating or abolishing the ecclesiastical courts

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<sup>66</sup>Helmholz, Medieval Marriage Litigation, p. 120.

<sup>67</sup>Canons 127, 128; PP 1831-2, xxiv, Report, Appendix B. The answers to the tenth question in the first section and the seventh question in the second section refer to the qualifications of chancellors and officiating judges (usually surrogates) respectively. Several surrogates cite court experience, reading in ecclesiastical law and study under their predecessors as contributing to their qualifications. Others simply stated that they were graduates or clergymen. Henry Law, the Chancellor of Bath and Wells, replied 'I am qualified as the laws of this realm require' (p. 272).

after the special commissioners' report of 1831-2, we are able to follow the careers and tally the emoluments of the Parfitt family in the Wells courts in the nineteenth century.

Thomas Parfitt was appointed Apparitor General of the episcopal court in 1782 when he was sixteen years old and was still in possession of the office in 1852.<sup>68</sup>

Thomas was the second Parfitt to enter the ranks of court personnel, Edward I (as we shall call him) having already been promoted from proctor to deputy registrar in 1771.

Edward II began to practise as a proctor in 1788 and probably replaced his father as deputy registrar at the turn of the century. The Parfitt family moved William into the vacant proctorial position at the age of twenty and continued to enjoy three posts at Wells.<sup>69</sup>

William, as might be expected, advanced into the deputy registrarship when it was vacated by Edward II in 1822 and a few difficult years passed before Peter Lewis came

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<sup>68</sup>pp 1852, xxxviii, Return of the Names of all Persons who have been appointed or nominated to any Office, in the Ecclesiastical Courts of England and Wales..., p. 101-3.

<sup>69</sup>In a case in 1814 in which William acted as a proctor, several instruments are cosigned by John Parfitt, aged 26, who may have been apprenticed to William, who was then 34: *Hippisley and Gait v. Plenty and Plenty*, D/D/C (1814). On the other hand, when William had to travel to another parish two years later to witness exhibits he took another relative, Margaret Cantelo, the wife of Edward Parfitt, along: *Adams v. Adams*, D/D/C (1817).

forward to fill the third place, this time as surrogate. The Rev. Mr. Parfitt dominated the surrogacy between 1828 and 1837, and again between 1840 and the 1850s, presiding over almost every session. The deputy registrarship remained in Parfitt hands throughout this period, passing from William to Edward III in 1837.<sup>70</sup> The years between 1833 and 1837, when Peter Lewis officiated, William acted as registrar, Thomas was Apparitor General and Edward III practised as a proctor, represent the apogee of Parfitt hegemony at Wells. Court offices were augmented by positions in the ecclesiastical administration at Wells, and bundles of Parfitt correspondence with deans, prebendaries and other church officials sit in the Somerset Record Office.<sup>71</sup>

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<sup>70</sup>Edward III shared the office with his fellow proctor Samuel Prat from 1837 to 1839. Prat was from a family of Glastonbury lawyers, ministers and tithe improPRIATORS. Edward III gave his residence as Glastonbury when he was admitted as a proctor in 1833 and may have been related to Prat by marriage.

<sup>71</sup>Ties between court and ecclesiastical personnel were by no means limited to the Parfitt family. We have already noted Edward Tuson's position as bishop's steward; Edward Parfitt was a steward of the college of vicars choral (of which Peter Lewis Parfitt was one); the Rev. Charles Henry Pulsford and the Rev. Henry Watson were among the canons residentiary in the 1830s when proctors sharing their surnames practised at Wells; and a Rev. George Tuson was a major landholder in the prosperous parish of Keinton Mandeville around 1830: W. Phelps, The History and Antiquities of Somersetshire, 2 vols. (London, 1836-9), 2:143-44 and 1:476. (In the copy of the first volume that I used there was a letter from the author to another Wells proctor, T.C. Robins, asking him to pay for his copies. A William Truman Harford Phelps,

With the monopoly of court offices came a monopoly of their emoluments.<sup>72</sup> Thomas Parfitt, unlike his predecessor George Dyer, never acted as an apparitor. Nonetheless, the fees he collected amounted to £45 a year throughout the nineteenth century.<sup>73</sup> Peter Lewis Parfitt's combined salary for officiating in the episcopal court (£10), the archidiaconal court of Wells (£20) and the peculiar courts for which he acted as official or surrogate (usually less than £20) was supplemented by benefices and non-judicial surrogate fees.<sup>74</sup> The surrogates who issued marriage

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the author or a kinsman, was practising at Wells Court at this time).

<sup>72</sup>Proctors' fees will be discussed below. Though it is hard to estimate salaries, a senior Chester proctor earned £500 per year in the 1820s. The Wells court, with its smaller volume of business, was probably less remunerative. Unfortunately, we do not have a table of the proctors' fees at Chester. PP 1831-2, xxiv, Report, p. 187.

<sup>73</sup>Thomas could earn as much as £67 16s. 10d. in a visitation year (1825) while his counterpart in the archdeaconry of Taunton earned only £14 per year between 1825 and 1828. The £45 figure is cited in PP 1852, xxxviii, Return of Names, pp. 101-3. In 1843 the court as a whole paid out £203 gross (£134 net) to other officers, probably the Apparitors-General and those who worked under them. PP 1844, xxxviii, Ecclesiastical Courts, p. 2.

<sup>74</sup>The Chancellor paid out £40 per year to be shared by the surrogates, of which £10 went to Peter Lewis Parfitt for officiating in court. He may have eventually received the entire amount, though in 1830 he was still sharing it with the Rev. Robert Foster. PP 1831-2, xxiv, Report, p. 272. Some of the £20 earned at the archidiaconal court and an unspecified amount above the

licenses for the episcopal court made an average of £337 per year between them, and it is unlikely that the Rev. Mr. Parfitt had no share in this activity.<sup>75</sup> While Parfitt's superior, the Official Principal, made far more money (£271), neither the archdeacon of Wells (less than £10) per year) nor the surrogate at Taunton (£14) approached his earnings.<sup>76</sup> But the most remunerative office, and the one held by the Parfitts from 1771 until after 1850, was the deputy registrarship. While William was deputy registrar in the 1820s, he could expect £250 per year from his episcopal appointment,

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£10 for officiating at the episcopal court came from sharing the job of surrogate at the registry, signing papers and hearing oaths. The remaining fees came from the peculiar courts. In 1828, Peter Lewis Parfitt was official or surrogate of fourteen of the twenty-three courts that required them. Salary data are in PP 1828, xx, Return of Causes; PP 1830, xix, Returns of Jurisdictions and Emoluments; PP 1831-2, xxiv, Report; PP 1843, xl, Returns of Proctors; PP 1844, xxviii, Ecclesiastical Courts; PP 1851, xlii, Abstract of Reversions; PP 1852, xxxviii, Return of Names and Emoluments.

<sup>75</sup>PP 1830, xix, Returns of Jurisdictions and Emoluments, p. 188.

<sup>76</sup>Salary data for VGOP and Archdeacons of Wells, as in n. 74. Higher figures for the Archdeacon of Wells are reported in PP 1843, xl, Returns of Proctors and PP 1844, xxxviii, Ecclesiastical Courts, but deductions have not been made for allowances paid to surrogates. Taunton returns are in PP 1830, xix, Returns of Jurisdictions and Emoluments; PP 1843, xl, Returns of Proctors; PP 1844, xxxviii, Ecclesiastical Courts; and PP 1852, xxxviii, Returns of Names and Emoluments. The surrogate's salary had dropped to £10 by 1851, but the archdeacon's seems to have increased from £19 in 1843 to £105 in 1851. This may be due to the way salaries were reported in each return.



at least £30 from the archidiaconal court of Wells, and an additional £250 from the peculiar courts.<sup>77</sup> In 1837, the twenty-seven-year-old Edward III succeeded William as the deputy registrar of the episcopal and archidiaconal courts and the registrar or deputy of seventeen peculiar courts.<sup>78</sup> Edward III had tripled William's income by 1843; the £1388 (net) he earned that year constituted 7% of the income of all deputy registrars in England and Wales.<sup>79</sup> As has been noted, only a fraction of these sums was derived from judicial fees. All the Parfitt registrars could take advantage of their admission as proctors to collect all the fees, traditionally divided between registrar and proctor, on probates and grants of administration.<sup>80</sup>

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<sup>77</sup>PP 1831-2, xxiv, Report, pp. 553-4.

<sup>78</sup>PP 1852, xxxviii, Return of Names and Emoluments, pp. 101-3. In 1843 Edward III became registrar of two peculiars he had been deputy of, and in 1852 he was acting registrar in six of the seven remaining peculiar courts. Thomas Robins, another proctor, held the registrarships of four peculiars in the 1820s (PP 1830, xix, Returns of Jurisdictions and Emoluments, pp. 190-5) but William had reduced that number to three by 1828 (PP 1828; xx, Returns of Peculiars, pp. 6-9).

<sup>79</sup>PP 1844, xxxviii, Ecclesiastical Courts, p. 2. The previous year his net earnings were £1081 (£1538 gross): PP 1843, xl, Returns of Proctors, pp. 2-4. His total earnings in 1852 were £1365, probably net: PP 1852, xxxviii, Return of Names and Emoluments, pp. 101-3.

<sup>80</sup>William Parfitt, who claimed he did not practise in court as a proctor once he became deputy registrar, continued to profit from probates and administrations: PP 1831-2, xxiv, Report, p. 274.

With an average of 319 probates and 122 administrations granted each year between 1827 and 1829, the deputy registrars of the diocese, who generally collected under a pound for a probate and three and a half to five pounds for an administration, necessarily earned most of their income in this way. If one doubles these fees to include the proctor's charge, the sum is even more impressive.<sup>81</sup>

When proposing salaries for officers of the church courts in 1843, Parliament demonstrated that it was the salaries of registrars rather than judges that were in need of reform. At Bath and Wells, where a total judicial salary of £251 was reported, placing them about midway down the list, the proposed diminution was £1. <sup>82</sup>The fees of the registrar and his deputy,

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<sup>81</sup>For fees: PP 1830, xix, Return of Jurisdictions and Emoluments, pp. 296-300. For numbers of probates 1827-1829: PP 1831-2, xxiv, Report, pp. 553-4. One quarter of the probates and one-seventh of the administrations are from the archdeaconry of Taunton, and therefore lined the pockets of the Kinglake rather than the Parfitt family. The Taunton deputy registrars reported fees of £101 in the 1820s (PP 1831-2, xxiv, Report, p. 554); £180 in 1843 (PP 1844, xxxviii, Ecclesiastical Courts, p. 2); and £260 in 1852 (PP 1852, xxxviii, Return of Names and Emoluments, pp. 101-3.)

<sup>82</sup>PP 1843, xxx, A Comparative Statement of the Salaries proposed by the Ecclesiastical Courts Bill..., p. 4. Between 1827 and 1829 the surrogate's salary ranked fifth out of eleven: PP 1831-2, xxiv, Report, p. 553. Deputy judges were rare in the 1840s, but the Wells surrogate continued to rank midway among his colleagues: PP 1843, xl, Returns of Proctors, p. 23 and PP 1844, xxxviii, Ecclesiastical Courts, p. 23.

however, were to be cut by 37%.<sup>83</sup> The cut was aimed at Edward III, who at this time was the fourth highest paid deputy in England and Wales, while the registrar, like the judges, ranked only tenth or eleventh.<sup>84</sup> Nor was this a precedent set by Edward III. William, in the 1820s, was earning 8% of the money paid to deputy registrars in the twenty diocesan courts of Canterbury province, while his registrar collected only 3%.<sup>85</sup>

Neither the money nor the power--tied as they were to a judicial system in decline--concentrated in the hands of the Parfitt family were destined to last. The jurisdictional legislation of the 1850s must have

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<sup>83</sup>PP 1843, xxx, Proposed Salaries, p. 4. Unfortunately the reported salaries were £185 for the registrar and £288 for his deputy, to be reduced to a total of £300. The idea was to cut the amount paid to registrars by half, and to redistribute this sum in a salary range of £200 to £600.

<sup>84</sup>For rankings of the registrar and his deputy: PP 1843, xl, Returns of Proctors, p. 23 and PP 1844, xxxviii, Ecclesiastical Courts, p. 23. The registrar of the diocese also doubled his income from £210 between 1825 and 1829 (PP 1830, xix, Returns of Jurisdictions and Emoluments, p. 188 and PP 1831-2, xxiv, Report, p. 553) to £400 in the 1840s and 1850s (PP 1843, xl, Returns of Proctors, pp. 2-4; PP 1844, xxxviii, Ecclesiastical Courts, p. 2; PP 1851, xlii, Abstracts of Reversions, p.508; PP 1852, xxxviii, Return of Names and Emoluments, pp.101-3.) The registrar of the archidiaconal court of Wells continued to collect £92 per year until 1846, when the income of the new registrar reached £100: PP 1852, xxxviii, Return of Names and Emoluments, pp.101-3. The registrar at Taunton also seemed fixed at £150 per year.

<sup>85</sup>pp 1831-2, xxiv, Report, p. 553.

obviated the offices of apparitor and surrogate; and the establishment of a probate court in 1857 destroyed the largest source of income for deputy registrars. Yet until these changes occurred, the Parfitts (and presumably relatives by marriage who are not easily identified) made themselves indispensable to the ecclesiastical administration at Wells, as did similar families in other dioceses.<sup>86</sup> Where they were most successful, perhaps, was in capturing and holding the pivotal office of deputy registrar. In their hands it proved a lucrative prize.

The archidiaconal court of Wells was organised in much the same way as the episcopal court. The two courts had merged by the 1770s, meeting on the same day, during the same hours, and employing identical personnel. The jurisdictional distinction was maintained by the use of separate Act books. At the head of the court was the archdeacon, appointed by the bishop for life. William Willes, appointed by his father in 1767, remained in office during the reign of Bishop Moss and finally died in 1815 under a third bishop, Richard Beadon.<sup>87</sup> The archdeacons of Wells presided over their courts longer

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<sup>86</sup>See PP 1831-2, xxiv, Report, passim for other cases, particularly where sons-in-law are employed.

<sup>87</sup>Charles Willes was appointed a surrogate of the archidiaconal court, though he never officiated.

and employed surrogates more sparingly than did their counterparts, the Officials Principal. Willes and Charles Sandiford (1815-26) were the first archdeacons to absent themselves entirely and their physically deficient successor Henry Law managed to sit four times between 1827 and 1851.<sup>88</sup> Of the nine archdeacons identified in our period, two (Edmund Aubery, Ll.D., 1753 and Henry Law, 1826-39) served as Officials Principal, and four of the eighteenth-century archdeacons acted as surrogates in the consistory court before or during their archidiaconates (George Shakerley, 1742-49; Edmund Aubery, Ll.D., 1749-57; Lionel Seaman, D.D., 1758-60; and Francis Potter, 1760-7). The archdeacons, like the bishops and their chancellors, were withdrawing from the administration of justice.

Itinerant church courts, travelling from town to town, were a common sight in many dioceses.<sup>89</sup> In Somerset, with the ecclesiastical administration firmly settled in Wells (and to a lesser extent in Taunton), the exposure of the county's population to ecclesiastical justice was limited to Visitations. Visitations were used

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<sup>88</sup>DNB, s.v. 'Law, Henry'. He suffered a breakdown in 1839, at which point he gave up the chancellorship but continued as archdeacon.

<sup>89</sup>Dunning, 'Wells Consistory Court', p.48; Morgan, 'Consistory Court of the Diocese of St. David', Chapter 1.

to supervise the clergy and laity and to bring the ecclesiastical aims of the bishop to the local clergy. An episcopal Visitation was a major undertaking in a county with notoriously bad roads, and though Somerset was not as massive a diocese as Lincoln with its 1300 parishes, it covered a large area. Bishop Hooper (1704- 27), in his notebook, described his diocese as containing 388 parishes and thirty towns within a circumference of 204 miles.<sup>90</sup> Visitation evidence is very thin in Somerset; neither call books nor articles of enquiry nor presentments survive for the larger jurisdictions of diocese and archdeaconry.<sup>91</sup> Instead, we must make use of the records of the peculiar jurisdictions, parish registers, the written accounts of clergymen and miscellaneous bundles of penances for crimes that go unrecorded in the Act books. The fullest documentation survives for peculiar jurisdictions, particularly in the late eighteenth and early nineteenth centuries; parish registers occasionally record Visitation dates, but without specifying the type of Visitation; and both Parsons Woodforde and Skinner have left descriptions of Visitations they attended.

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<sup>90</sup>Marshall, George Hooper, p. 111.

<sup>91</sup>There is a reference to a Call Book for the 1791 Visitation but I have been unable to locate the document at the SRO: Kemm, 'Church of England', Bibliography. Of course, the printed Visitation Articles preserved among the papers of the peculiar jurisdictions (D/D/Pd box 2) may also have been intended for use in episcopal or archidiaconal Visitations.

The visitation process was carefully regulated by canon, but like many canonical injunctions, they were not widely adhered to in this period. Ideally, the bishop was to visit his diocese triennially after his initial, or Primary Visitation (Canon 60). The archdeacons and peculiars were visited more frequently by their officials, usually once or twice a year. The Visitor or his deputy was accompanied by a registrar, clerks and officials.<sup>92</sup> The registrar was responsible for issuing a citation mandate, read out during Sunday services in every parish church, summoning the necessary parties to the Visitation. The Visitation itself, usually held in the chief town of the rural deanery, commenced with a church service, the sermon given by a local clergyman chosen for the occasion.<sup>93</sup> A roll call from a book prepared by the registrar followed. Clergymen, schoolmasters, physicians, surgeons, midwives and others presented their licenses, letters of orders and dispensations (Canon 137). Outgoing churchwardens submitted their presentments, based on their answers to the previously circulated Articles of Enquiry and new

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<sup>92</sup>Registrars and apparitors could make considerable sums at Visitation: PP 1831-2, xxiv, Report, pp. 461; 496-500; 501-6; 509-10; 525-29.

<sup>93</sup>Marshall, George Hooper, p. 116. Parsons Woodforde and Skinner record the clergymen at the Visitation they attended: Diary, 1:255-56, Journal, pp. 176-78.

churchwardens, two for each parish, were sworn in.<sup>94</sup> The registrar and his staff might be busy collecting procurations and other Visitation fees, transcribing the presentments of illiterate churchwardens, or transacting testamentary business.<sup>95</sup> In the eighteenth century, as bishops began to take a greater interest in the church fabric, injunctions for repairs could be issued at Visitation.<sup>96</sup> Another church service, including the Visitor's charge or sermon, concluded the official Visitation.

Visitation was also a social event, especially for clergymen. Parson Woodforde, as curate of the parish, read the prayers at Castle Cary Visitation in 1766 and afterwards dined and drank at the Ansford Inn at the expense of Archdeacon Potter, who was visiting on behalf of the aged bishop. His memories of Visitation in Norwich, where he later took up his living, are equally pleasant. Back in Somerset for a visit to relatives in 1779, Woodforde attended Bruton Visitation to catch up with old clerical friends and to hear the new bishop, Dr.

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<sup>94</sup>Canons 109, 111, 113, 115, 116, 117, 118 and 119 cover presentment in our period.

<sup>95</sup>There were still many presentments signed with a mark in the nineteenth century: D/D/Pd.

<sup>96</sup>The Rev. J.S. Purvis, An Introduction to Ecclesiastical Records (London: St. Anthony's Press, 1953), p. 47.



Charles Moss. The bishop's charge 'chiefly consisted of advising them to catechise the children publickly and to give them Lectures on the same...and lastly of visiting the sick with an enconium on the King'.<sup>97</sup> Similar thoughts were in Bishop Law's mind almost fifty years later when John Skinner, the rector of Camerton, recorded his impressions of Frome Visitation. It took the bishop two hours to confirm the 'multitudes' who attended the Visitation for that purpose, and Skinner was equally impressed by the sermon, the singing and the bishop's charge to the clergy. Bishop Law, 'confining himself more particularly to the enforcing the parochial duties of the resident minister', such as the administration of the Sacraments, the performance of the marriage ceremony and the visiting of the sick, also expressed his views on recent Parliamentary legislation. 'It was a very good Charge; the delivery was excellent, and had double effect, as the sentiment thus conveyed evidently came from the heart.'<sup>98</sup>

Woodforde and Skinner confine their remarks on episcopal Visitation to these brief references and do not provide many clues to the frequency of the bishops'

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<sup>97</sup>Woodforde, Diary, 1:59; 204-5; 255-6.

<sup>98</sup>Skinner, Journal pp. 176; 177.

visits.<sup>99</sup> However, Luxborough, a parish in the archdeaconry of Taunton, has left a record of Visitations in its regioster of baptisms, marriages and burials. The parish was visited annually from 1734 until 1779, when the notation ends. There is no Visitation listed for 1738, but Luxborough is visited twice in 1737, as well as in 1776 and 1778. It is clear from the dates that both the archidiaconal and episcopal courts sat during Visitations and that, contrary to canon, inferior jurisdictions were not inhibited during episcopal Visitations.<sup>100</sup> On the other hand, in the years 1766

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<sup>99</sup>Skinner records that the churchwarden he chose in 1822 did not show up at Visitation (probably archidiaconal) to be sworn in: Skinner, Journal, p. 1.

<sup>100</sup>D/P/luxb 2/1/1. According to nineteenth-century parliamentary returns, the bishop always inhibited the archdeacons before his Visitation--as in 1825 and 1828--usually from Lady Day to Michaelmas Day. The Archdeacon of Wells had a composition with the bishop that allowed him to continue his testamentary jurisdiction; the inhibition alluded to may not have touched judicial business at all. PP 1830, xix, Returns of Jurisdiction and Emoluments, p. 188; PP 1828, xx, Return of Causes, pp. 9; 11.

<u>Month</u>	<u>Visitations</u>
April	4
May	17
June & July	11
August & September	12
October & December	4

The distribution of Visitations in Luxborough (above) indicates that the archidiaconal court was not inhibited. May, June, July, October and December were common months for court sessions, and April sometimes fell in Easter term. Only the twelve visits in August and September were likely to avoid court sessions. See also Burn,

and 1779 when we know from Woodforde that episcopal Visitations were held, Luxborough was visited a short time before the dates mentioned for Castle Cary and Bruton, which meant that the archdeacon suspended his annual Visitations in the years the bishop visited. The 1766 Visitation occurs in August, after Trinity term, but this may be because Archdeacon Potter, who conducted the Visitation for the bishop, was also the chief surrogate in the consistory court and had to schedule his time accordingly. In 1779, the bishop visits in July when his court is in session. If, on the evidence of Woodforde and Skinner, we conclude that episcopal Visitations were held in July, August and September, when the roads were better and the weather was favourable, we arrive at dates for Luxborough that nicely approximate the triennial pattern, at least until the 1770s.<sup>101</sup>

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Ecclesiastical Law, 1:483 for other examples of the indulgence of inferior jurisdictions.

<sup>101</sup>The months of June through October were favoured by Bishop Hooper, who could take advantage of the parliamentary recess. Hooper tried to schedule his visits around the harvest and in his old age he divided up the Visitation, covering one archdeaconry at a time: Marshall, George Hooper, pp. 116;117.

The dates arrived at are 1734, 1735, 1737, 1741, 1745, 1748, 1751, 1754, 1757, 1760, 1763, 1766, 1769, 1776, 1778, 1779. The October Visitation in 1774--possibly Bishop Moss's Primary Visitation--or the double Visitation of 1776 (July, October) might fit the pattern. The 1763 Visitation is mentioned in *Pulteney v. Willmont*, D/D/C (1763). Crewkerne Visitation occurred on 5 July 1763, four days before Luxborough, and

Because the consistory court continued to sit during Visitation in Somerset, there was no need for the court that followed the Visitor's circuit in other dioceses, trying causes issuing from the churchwardens' presentments.<sup>102</sup> Yet there is evidence, in the form of two bundles of penances, that summary correction for certain offences was meted out at Visitation.<sup>103</sup> The majority of penances are for the crime of sexual incontinence, with a few for defamation, and they include parishes in all three archdeaconries and for most of the years between 1733 and 1782. None of the causes is recorded in the existing Act books. Instead, it is possible that these penances were assigned after the crimes were confessed at Visitation.<sup>104</sup> Another summary form of justice, these brief Visitation trials

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was taken by the Rev. Thomas Camplin, Ll.D., Commissary of the bishop and Archdeacon of Bath.

<sup>102</sup>For example, Houlbrooke, Church Courts and the People, p.27. In fact, the absence of the deputy registrar at Visitation had more influence on the schedule of the consistory court than any rules as to inhibitions. See the notation on the bill of costs in Board v. Hill, D/D/Ca 443 (1843) and D/D/C (1843): 'Having heard that in consequence of Mr. Parfitts being on the visitation there would be no Court on Tuesday....'

<sup>103</sup>D/D/C, boxes PB3 and PB9.

<sup>104</sup>See also: Purvis, Introduction, p. 48. Penances issued at Visitation were rare in York, and came instead, as they did in Somerset, from the registry. In Wiltshire, some matters were dealt with at Visitation but most causes were heard subsequently: Ingram, 'Ecclesiastical Justice in Wiltshire', p. 27.

swell our reckoning of the numbers of offenders to appear before ecclesiastical judges.<sup>105</sup> Scene of presentment and confession, of clerical feasting and mass confirmation, of singing and sermons, the Visitation brought the church administration, its hierarchy and its courts closer to the majority of the people of Somerset than a court sitting in Wells ever could.

#### IV. Procedure

The business of the courts was of two kinds, ex officio and instance. Office causes were either ex officio mero, promoted at the mere office of the judge, or promoted by a party appointed by the judge or voluntarily appearing. Instance causes were causes between parties and resembled common law litigation initiated at the request of the plaintiff. Though the procedure employed in each type of litigation was not entirely distinct, there are some important differences which will be examined in this section.

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<sup>105</sup>Unfortunately, it is difficult to determine how badly the Act books underestimate the frequency of defamation and sexual crimes. I do not know how complete the bundles of penances are, and without presentments one cannot discover how many of those presented went on to perform penance after confession, how many appeared before the consistory court and how many evaded punishment by failing to appear.

As in sixteenth-century Norwich and Winchester, testamentary, tithe, defamation and matrimonial causes accounted for over nine-tenths of the instance business in the consistory court in our period.<sup>106</sup> It is here, however, that the similarity ends. The volume of new causes, the crimes most frequently prosecuted, the balance between office and instance business, and the method of proceeding in office causes were peculiar to the diocese and the period. The number of causes arriving in court each year had already declined substantially, and continued to do so, from a high of 162 in 1737 to a low of eight in 1850.<sup>107</sup> Ex officio proceedings dwindled to a trickle of this reduced volume. Yet this had not always been the case. The Reformation and its concomitant changes in clerical duties and church equipment had multiplied office offences, those that required the judge or some promoting party to proceed

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<sup>106</sup>Houlbrooke, Church Courts and the People, p. 39.

<sup>107</sup>These statistics are for the episcopal court. The volume of business did not decline steadily over the centuries; indeed, this is one of the drawbacks to postulating the imminent death of the church courts on the basis of a short-term analysis of the number of causes entering the courts. For example, the elimination of jurisdiction over debt caused a drastic decline in business in the Canterbury court in the early sixteenth century; and the total number of causes fluctuated wildly in the new century. Brian Woodcock, Medieval Ecclesiastical Courts in the Diocese of Canterbury (London: Geoffrey Cumberlege, Oxford University Press, 1952), p. 84.

against transgressors of ecclesiastical law. Other crimes, such as usury, sacrilege, witchcraft and malicious gossip had all been zealously prosecuted at different times in the past. The correction of clergy, once a major aim of ecclesiastical discipline, is almost absent from our records. Instead, the clergy frequently appear as plaintiffs in tithe suits.

Nor was the court's lack of interest in these matters balanced by a compensatory increase in the remaining office causes. The majority of ex officio causes in our period were for immorality (adultery, incontinence, fornication and incest). The other persistent office causes were for unseemly behavior in church (brawling, pew disturbances, irreverence) and for disputes over churchwardens' accounts. Only four or five defamation causes were proceeded with ex officio after 1733 and the last of four prosecutions for profaning the Sabbath began in Wells in 1756. Together these amounted to less than 5% of court business until the 1780s, when prosecutions for immorality became rare and the total plummeted once again.<sup>108</sup> As the court abandoned wide areas of correctional jurisdiction it simultaneously reduced its responsibility for individual prosecutions, rarely acting ex officio mero, or at the mere office of

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<sup>108</sup>There were only fifteen prosecutions between 1780 and 1823.

the judge. This meant that the promoters, most commonly the churchwardens of the defendant's parish, were supposed to bear the costs if the suit failed.<sup>109</sup> Sexual immorality was prosecuted by the mere office of the judge for the last time in 1760 in the episcopal court; of the eighty-two people charged with adultery, incontinence or fornication between 1733 and 1760, only five were prosecuted ex officio mero.<sup>110</sup> Mere office proceedings had been far more common in the archdeacon's court, but ended, for sexual immorality, in 1743. Sixteen of the twenty-three prosecutions between 1735 and 1743 were by the mere office of the judge. The practise of using churchwardens, who had presumably presented the offenders at Visitation, to promote causes may have been a court custom of long standing. Mere office prosecution was used in conjunction with summary proceedings, and it may have been considered beneficial to encourage the use of promoters in the longer plenary causes, though this cuts across the grain of canonical thinking, which stipulated that churchwardens were not bound to prove

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<sup>109</sup>For a £30 bond taken out by the churchwardens to insure payment of costs, see Athay and Walkley v. Brock, D/D/C (1757). At Norwich, most ex officio business was promoted by churchwardens, at least in the nineteenth century: PP 1831-2, xxiv, Report, p.216.

<sup>110</sup>Ex officio mero prosecutions: 1757 (1); 1758 (3); 1760 (1).



presentments because it was presumed that 'they do it without malice, and the crime is notorious'.<sup>111</sup>

The Somerset courts, then, were hearing fewer causes, punishing fewer crimes and correcting fewer clergymen and initiating fewer prosecutions in our period. Most court business was between parties and called upon the court to act as an arbitrator. When the court exercised its traditional correction function, it did so increasingly through intermediaries in the form of promoters of ex officio causes. And yet the ancient machinery of Visitation and presentment ground on, most parishes duly electing their two churchwardens in Easter week.

It is difficult to determine whether the phasing out of ex officio mero prosecutions corresponded to a circumscription of the role of the churchwarden. Churchwardens were lay officials responsible for reporting the crimes of their fellow parishioners in presentments at Visitation. Customs differed, but the annual selection of two churchwardens for each parish was most frequently divided between the incumbent, who chose one, and the parishioners, who elected the other.<sup>112</sup> If one assumes

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<sup>111</sup>Floyer, Proctor's Practice, p. 73.

<sup>112</sup>Skinner lived his life in the middle of battles over churchwardens, their appointment, accounts and duties. Customarily he appointed one of the two churchwardens of Camerton: Skinner, Journal, p. 1. In Staplegrove, Somerset, the election of churchwardens led to a suit. In the defendants' allegation it was noted

that all mere office proceedings were initiated by churchwardens' presentments, about one-third of the ex officio causes in the episcopal court involving sexual or matrimonial crimes were commenced after presentation by the churchwardens. The figure may well be twice as high, because a large proportion of causes were promoted by unidentified men or women who might have been churchwardens. In the archdeacon's court, the rate is at least 72%.<sup>113</sup> The total number of causes is very small compared with figures for earlier periods and though churchwardens continued presenting controversial crimes

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that 'it hath been usual and immemorially accustomed within...Staplegrove to choose two churchwardens for the ...Parish yearly in Easter Week according to notice to be given in the parish church...on Easter Sunday for that purpose And that such Churchwardens are to be chosen out of the Inhabitants of the...Parish according to, and in order of, their Estates within the...Parish And that the Persons so chosen whether men or women, must execute the...office for the whole Year after their Election by themselves or lawful Deputy'. Gale and Shattock v. Cornish and Shorland, D/D/C (1741).

<sup>113</sup>Episcopal court: Of 153 people presented, 37% (58) were presented by churchwardens or prosecuted ex officio mero. An additional 35 were presented by unidentified men or women. Archidiaconal court: Of 61 presented, 72% (44) by churchwardens or mero; 10 by unidentified men or women. Archidiaconal court: Of 61 presented, 72% (44) by churchwardens or mero; 10 by unidentified parties. In fact, because ministers were directed to present when their churchwardens failed (Canon 113), either out of intimidation or neglect, to bring a crime to the attention of the court, the numbers may be even higher. The clergy presented 18 people to the episcopal court, three to the archdeacon's court. Women (as in Staplegrove, n.112), could theoretically serve as churchwardens.

involving people and not simply church fabric well into the nineteenth century, individual churchwardens could easily serve their terms without ever doing so. Indeed, the atmosphere of contention surrounding the churchwardens' duties is almost absent in our period. Only one example of prosecution for nonpresentment can be found and this is for neglecting to mention decayed church bells rather than decaying morals.<sup>114</sup> Even the disputes clergymen were having with Methodist churchwardens in other dioceses were rare in Somerset.<sup>115</sup> Animosity, when it occurred, was directed at the churchwardens' other functions. Until the New Poor Law was enacted in 1834, churchwardens served concurrently as overseers of the poor. This created a double obligation to seek out bastard births and their surveillance of unmarried women could occasionally draw churchwardens into additional

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<sup>114</sup>Pulteney v. Willmont, D/D/C (1763). Quaife, Wanton Wenches, p. 188, cites cases of parishioners overriding hesitant churchwardens to present their neighbours.

<sup>115</sup>Cf. St. David's diocese in Morgan, 'Consistory Courts of St. David's', especially Chapter 4. The only comparable cases for Somerset are Wickham v. Cooper and Wickam v. Cooper and Wainwright, both D/D/Ca 442 (1839). Cooper was charged with voting in favour of the following resolution at a vestry meeting: 'That this Vestry considering church rates at all times bad in principle and particularly unjust in practice and quite uncalled for at the present time resolved to adjourn all further consideration of the subject for which it has been called till this day twelvemonth', and both churchwardens were cited for refusing or neglecting to provide bread and wine for Holy Communion.

litigation for defamation.<sup>116</sup> Digging up churchyard  
 fives courts, usually at the minister's request, also  
 provoked parochial reprisals.<sup>117</sup> Churchwardens  
 incurred less wrath than they had in the past, and were  
 no longer chastised for extremes of zeal or neglect.  
 Re-election, even multiple terms were not uncommon. At  
 the same time, it is possible that churchwardens had  
 relinquished much of their responsibility for supervising  
 the laity, and that this was accepted by the clergy (who  
 often presented for them), the courts and the people.  
 When divine service at Castle Cary was disrupted by  
 Thomas Speed, 'quite drunk and crazy', who called the  
 singers a 'pack of Whoresbirds' and gave Parson Woodforde  
 'a nod or two in the pulpit', he was hauled away by the  
 parish constable, not the churchwarden, his crime to be  
 judged by a magistrate rather than the Wells court.<sup>118</sup>

A cause, whether office or instance, could be  
 adjudicated summarily or by following full plenary  
 procedure. Summary procedure was used in most defamation  
 cases and, as mentioned above, in straightforward causes  
 of fornication leading to the birth of a bastard.<sup>119</sup>

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<sup>116</sup>Stroud v. Churches, D/D/C (1834).

<sup>117</sup>N&O for S&D 17 (1923):75-7; 23(1942):194-5.

<sup>118</sup>Woodforde, Diary, 1:101.

<sup>119</sup>In the Gloucester court, procedure could be  
 telescoped even further to allow examination of the

Some abridged form of procedure was probably used in causes determined at Visitation. In a summary defamation proceeding the defendant would appear, confess the objected words, apologise in open court and pay costs to the proctor of the plaintiff. In a modified form of summary procedure, the defendant would be assigned public penance after confessing the defamatory words and would be responsible for returning a certificate of performance to the court before paying costs. Thus, a defendant could discharge a defamation suit for as little as 10s. and a single court appearance. The plaintiff need not appear at all, sending a proctor instead. Bastardy causes, which were ex officio, were processed without proctors and did not seem to require the payment of any costs.<sup>120</sup>

Plenary suits were initiated when the defendant was cited to appear in court. Once the citation was served by an apparitor or mandatory and certified, the proctors representing each party appeared in court and exhibited their proxies.<sup>121</sup> Defendants could appear in court

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witnesses in open court and oral sentencing: Hockaday, 'Consistory Court of Gloucester', p. 216.

<sup>120</sup>Costs were kept to a minimum by employing ad hoc summary procedure. In medieval Canterbury defendants might even be cited by word of mouth: Woodcock, Medieval Courts of Canterbury, p. 70. Ex officio causes were always less costly than instance causes.

<sup>121</sup>Canon 129. This step usually goes unrecorded in the Act books and must have frequently been omitted. Judges repeatedly admonished proctors to be certain of

court without appointing a proctor and often waited until they contested suit before doing so. The judge would then assign a day on which the plaintiff's proctor could offer a libel, or series of allegations. The libel could be offered verbally before it was committed to writing, but the plaintiff's proctor was still obliged to submit copies to the judge and the adverse party at least three days before the session when it was to be admitted. If the judge admitted the libel, the defendant or his proctor could contest suit negatively by denying the charges, or could admit defeat by giving a positive issue. A positive issue, or confession, led to the rapid termination of the cause in the form of sentencing, the assignment of costs and, where necessary, penance.

In suits that were contested, the plaintiff's proctor was assigned a period in which to prove the libel.<sup>122</sup> During this term probatory witnesses and documents were assembled with the intention of corroborating the charges in the libel. Though many simple cases could be proved by two witnesses, the legal minimum, complicated cases comprising a series of events required

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their proxies before commencing a case, and non-suiting for faulty or nonexistent proxies was not rare. It is possible that the proctors at Wells automatically acted in causes for which no proctor had been appointed.

<sup>122</sup>In some cases, particularly divorces, the written answers of the defendant might be required at this point.

several witnesses. Written instruments, such as extracts from parish registers, or wills, also required the corroboration of witnesses. The witnesses, whether produced by request or by a compulsory served on them by the court, travelled to Wells to give their testimony.<sup>123</sup> As many as three journeys could be required to complete the cycle of swearing, examination and answering interrogatories, and no witness was compelled to depose until he had been reimbursed for travel and loss of working time by the party that called him.<sup>124</sup> The mode of examining witnesses was what distinguished proceedings in the ecclesiastical courts and what generated the documents most useful to the historian.<sup>125</sup> Witnesses were questioned individually and in private, by a registrar or other court official who was free to form whatever questions he thought necessary to elucidate the material in

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<sup>123</sup>Witnesses were examined by commission when age, infirmity, great distance or another competing jurisdiction made examination in Wells impractical.

<sup>124</sup>Eventually, the party that lost the suit paid these charges. It is intriguing to analyze the 'travelling expenses' in bills of costs according to class, gender and occupation.

<sup>125</sup>The commission of 1831-2 recommended the introduction of viva voce examination and the report is full of arguments for and against the two methods of examination: PP 1831-2, xxiv, Report. Helmholz seems to have been unduly influenced by the opponents of private examination, largely on the grounds that private examination was costly, time-consuming and barred the judge from assessing the quality of evidence and from cross-examining the deponents.

the libel. Answers were supposed to be transcribed verbatim, read out by the judge and then amended and signed by the witness. The vitality of this procedure is evident in the early years of our period when depositions were long and rambling and authentically reflected the voices of deponents. Floyer, in his Proctor's Practice, advises his readers to warn their witnesses to be sure the registrar records their words accurately, so that 'under Pretence of putting them into decent style, their whole sense be not altered'.<sup>126</sup> Examiners had their own ideas about what constituted evidence. 'I was desirous to hear the witness's own statement of facts', an examiner of Doctors' Commons told the Ecclesiastical Commissioners in 1830, 'and to take down as much of it in his deposition as I considered evidence'.<sup>127</sup> Later registrars stuck more closely to the libels, which became far more detailed, and witnesses in important cases were coached by attorneys.<sup>128</sup> Witnesses might also be called upon to answer interrogatories, questions posed by the adverse party intended to cast doubt upon a deponent's account of events and to undermine his credibility.

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<sup>126</sup>Floyer, Proctor's Practice, 2nd ed., p. xxvii.

<sup>127</sup>pp 1831-2, xxiv, Report, p. 55. This man had been a proctor since 1790 and was hardly describing anything new.

<sup>128</sup>Hamlin v. Hamlin, D/D/C (1833B).



Recalcitrant witnesses were subject to the punishment of the court and many were excommunicated for refusing to appear or for evading examination after being sworn.

When the plaintiff's proctor finished calling witnesses, the defendant had the option of making an allegation that might be admitted once it was written down and was shown to be reasonably specific. Once admitted, it was proved in the same way as the libel. The defendant could also make exceptions to the character of any witness and these, too, had to be approved by the judge before they were submitted to proof. The process of allegation and counter-allegation could be quite lengthy, but generally the allegation did not progress beyond the verbal stage and was used to protract proceedings or to intimidate the opposition. The depositions of all witnesses, whether on the libel or on subsequent allegations, were then published and the judge assigned two terms, one to propound all acts and one to conclude.<sup>129</sup> Any suspicion that information in the

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<sup>129</sup>The terms to propound all acts and to conclude could be used by either or both parties, but usually went to the party with the strongest case. 'On the day assigned to propound and invoke all the acts the proctor who thinks he has the better cause must say in court that he exhibits all the acts or things enacted, brought into court, alleged, propounded and exhibited, proved, and confessed in the cause, so far as they make for him, and ask that a term may be assigned to conclude against the next court day. The adverse party should do the same, unless he cannot hope to win, and is only

depositions had been made known to the adverse party prior to this time could result in non-suiting and witnesses were warned repeatedly not to divulge the contents of their depositions. Conclusion was followed by 'informations', private sessions during which the proctors argued their respective positions before the judge, usually at his house or in his chambers. When the judge reached a decision he could summon the vanquished party by means of a monition to hear sentence and see costs taxed in open court and, when necessary, receive an assignment of penance. Many cases were ended with an interlocutory decree, having the weight of a final sentence but saving time and expence, awarding victory or dismissing the cause verbally. Sentences were often executed in the absence of the defendant, in which case a monition to pay the costs taxed and to perform penance was served on the absentee by an apparitor.

Court procedure, whether plenary or summary, was flexible. Openings were provided from the time of citation onward for conciliation and settlement and an active judge could, as Bishop Hooper did in sixteenth-century Gloucester, participate personally in the process of arbitration. The nineteenth-century view, as expressed by the Commissary of the Archbishop of York,

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interested in protracting the cause': Ritchie, Ecclesiastical Courts of York, p. 146.

was that arbitration was no more than personal duty, in his case motivated by the desire to save the parties money otherwise wasted in court.<sup>130</sup> Seven percent of the defamation causes listed in the Act books were settled before they reached the episcopal court and an additional 26% were resolved or dropped before confession, death, sentence or excommunication ended the matter.<sup>131</sup> Settlements that occurred out of court may have been arranged by proctors, but arbitration might be undertaken by a variety of individuals. Parson Woodforde was forced to overcome his desire to 'live peaceably with all men' and intervene to keep a lengthening chain of village causes out of the courts in 1768. The causes resulted from personal feuds and animosities inspired by the ever-controversial church singers. The negotiations

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<sup>130</sup>Price, 'Gloucester Diocese 1551-3', pp. 80-1. Bishop Hooper also appointed arbitrators to act for him. Commissary of York: PP 1831-2, xxiv, Report, p. 132. Out of 90 instance causes in Lincoln between 1430 and 1431, 20 were settled by amicable composition, 28 were suspended (and probably settled) and only nine reached sentence: Colin Morris, 'A Consistory Court in the Middle Ages', Journal of Ecclesiastical History 14 (1963): 157-8. On the other hand, there were very few cases of arbitration in medieval Canterbury: Woodcock, Medieval Courts of Canterbury, p. 59.

<sup>131</sup>Of 949 complete cases in the episcopal court, 74 are marked 'pax', 'peace', 'ended' or are left blank; a further 248 were finished or dropped before reaching an interlocutory decree or a dismissal (this includes causes 'ended' after an excommunication). Of 277 cases in the archidiaconal court, 19 (6%) are in the first category and a further 68 (24%) are in the second.

stretched over months and were only partly resolved when the leading parishioners met at the local inn and arranged to remove the main suit from Wells Court. Yet it was not until a year later, in 1770, that the reviled Justice Creed, who had been burnt in effigy before his own house, 'buried in the Gulf of Oblivion' his differences with the citizens of Castle Cary. Those assembled drank to peace and signed complicated terms ending all outstanding lawsuits.<sup>132</sup>

While procedural flexibility was intended to nurture peaceful settlement, it might also be used to prolong litigation and pad costs. Causes that remained on the Act books for extraordinary lengths of time did not reflect well on judges who should have been intolerant of delay. Judges could penalize parties for retarding process by levying a fine, but this rarely happened in Wells Court. Instead, judges could abet proctors--who stood to gain from extended causes--by endlessly reserving the pains of excommunication of contumacious defendants and by countenancing delay at later stages of the causes they heard. Delay does not seem to have been a chronic problem at Wells. (See Table IIIG).

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<sup>132</sup>Woodforde, Diary, 1:79;84;81;98.

TABLE III G

Cause Length from Act Books

	AIF*		Divorce	
	episc. and Arch. Wells sessions/cause	adjusted(a)	episc. and Arch. Wells sessions/cause	adjusted(a)
1733-9	6.64	10.00	5.00	
1740-9	11.30		9.00	
1750-9	9.29	10.71	12.88	
1760-9	12.08	13.54	4.00	
1770-9	14.44		7.50	
1780-9	9.00		14.00	
1790-9	2.00	3.00	12.00	
1800-9	3.70	4.00	7.50	
1822-9	9.00		37.00	
1830-9			35.00	
1840-9			6.00	

	Defamation		Arch. Wells	
	episc. sessions/cause	adjusted(b)	sessions/cause	adjusted(b)
1733-9	5.83	8.41 (62%)	3.90	8.00 (64%)
1740-9	5.31	9.85 (46%)	3.73	6.50 (58%)
1750-9	4.23	7.32 (45%)	3.14	4.00 (43%)
1760-9	3.45	5.48 (49%)	3.59	6.78 (59%)
1770-9	4.03	7.00 (47%)	12.35	21.90 (46%)
1780-9	3.50	5.70 (49%)	3.67	6.25 (57%)
1790-9	3.50	6.93 (35%)	3.60	6.75 (60%)
1800-9	3.01	7.93 (28%)	4.52	9.29 (59%)
1822-9	6.08	8.65 (64%)	3.21	4.17 (37%)
1830-9	6.81	10.47 (59%)	4.42	5.80 (33%)
1840-9	4.50	8.00 (48%)	3.90	6.60 (50%)

(a) Adjusted to exclude causes ended in one session.

(b) Adjusted to exclude causes ended in two sessions or less.  
 Figures in parentheses represent proportion of total number  
 of causes used in adjusted computation.

\* Adultery, Incontinence, Fornication

Penance was performed for sexual offences if the crime was confessed or the cause reached sentence. The offending party in a defamation suit repeated his apology either in open court, in a parish church after divine service on Sunday, or at a minister's house. In only one case did the guilty party have to ask forgiveness of his congregation, and this was for defaming the rector of the parish.<sup>133</sup> Penances performed outside court were normally delivered before the minister and the churchwardens of the parish in which the defamation occurred; the defamed party also could choose to attend. The crimes of fornication, adultery, incontinence and incest were punished by a penance which followed a form dating back to the Reformation:

That on Sunday the eighth day of December instant the said Thomas Every must come into the parish Church of Martock aforesaid with a white wand in his hand and a white sheet on his uppermost Garment and in such sort much stand before the reading Desk of the said parish Church during the whole time of Divine Service and after a Sermon or Homily abt Incontinence or fornication is read he must with an Audible Voice make the following acknowlegment repeating the same word for word after the Minister:

I Thomas Every do before this Congregation here present Acknowledge and confess that I have most grievously offended the Divine Majesty of Almighty God and the Laws Ecclesiastical of this Realm in having been guilty of the Crime of Adultery ffornication or Incontinence with Betty Glover And I do protest that I am truly and heartily sorry for the same and ask God fforgiveness for this my Heinous Offence and evil Example to you in this behalf and promise from

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<sup>133</sup>Wickham v. Isaac, D/D/C (1763); D/D/Ca 428 (1763).

henceforth not be guilty of the like offence but on the contrary to behave myself as becomes a good Christian and dutifull Subject and I intreat you all here present to pray with me and for me to Almighty God that it may please him of his infinite Goodness to forgive me--

And then meekly and penitently kneeling down he must rehearse the Lords prayer and he must certify hereof at Wells.<sup>134</sup>

More severe forms of penance--those commencing on the church porch, requiring a bare head and bare feet, performed outside the parish church in the market place or the cathedral, or involving corporal punishment--and multiple penances were no longer assigned in our period.<sup>135</sup> Nor does the commutation of penance into a money fine seem to have survived into the eighteenth century in Somerset.<sup>136</sup>

The courts had two related sanctions at their disposal to enforce obedience: excommunication and imprisonment. Excommunication in our period was solely of the greater variety, denying the excommunicant access to the church, its Sacraments and its congregation. Excommunicated persons were barred from Christian burial

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<sup>134</sup>Taylor and Adams v. Every, D/D/C (1754).

<sup>135</sup>Price, 'Gloucester Diocese 1551-3', pp. 89-99; Stieg, 'Parochial Clergy', p. 132; Quaife, Wanton Wenches, pp. 192-93.

<sup>136</sup>Quaife, Wanton Wenches, pp. 194-95, describes connivance between ministers and penitents over the performance of lesser penances and attempts to bribe clergymen responsible for overseeing penance. I have not encountered any similar examples in the later period.

and from many legal rights, including the right to make a testament or to bring an action.<sup>137</sup> Judges could impose excommunication for failure to appear in court, refusal to answer the libel or to give a deposition, to perform penance or to pay the costs of a suit. The impact of excommunication was softened by a procedure commonly employed in the Wells courts. The pains of excommunication, once a person was pronounced contumacious, could be reserved for many sessions at the request of an adverse proctor who thought he might see his opponent in court eventually or who hoped to promote a settlement out of court. If this failed, the judge could excommunicate the party in contempt and then wait several sessions before promulgating the schedule of excommunication and delivering letters denunciatory to the parish of the excommunicant. These letters were read out to the congregation twice a year until absolution occurred.<sup>138</sup> Absolution could be obtained, after settling any outstanding bills with the registrar, by submitting to a judge, making an oath and paying a fee.<sup>139</sup> Individuals

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<sup>137</sup>Burn, Ecclesiastical Law, 1:545-48.

<sup>138</sup>At York, judges usually waited two weeks before promulgating the excommunication; Ritchie, Ecclesiastical Courts of York, p. 102; Law, Forms of Ecclesiastical Law, 2nd ed., pp. 145-7.

<sup>139</sup>Law, Forms of Ecclesiastical Law, 2nd ed., pp. 145-7.



who remained excommunicated for more than forty days were liable to imprisonment. The adverse proctor could ask the judge for letters to present to the bishop certifying the duration of the excommunication and then the bishop could apply by a letter of signfication to Chancery for a royal writ de excommunicato capiendo, or warrant to apprehend and imprison the excommunicant.<sup>140</sup> The prisoner was not released until he had submitted and paid his fees. All this changed in 1813 when an Act of Parliament discontinued excommunication as a punishment for contempt and substituted arrest and imprisonment up to six months on a writ de contumace capiendo.<sup>141</sup> This, as we shall see, had a dramatic effect on the number of arrests of both defendants and witnesses and may have added unexpected muscle to a court that had previously made little use of secular enforcement. Neither excommunication nor the enforcement of a significavit was intended as a punishment, but rather as a warning to the disobedient. Absolution, preceded by submission, invariably released the offender from his pains or his prison.<sup>142</sup>

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<sup>140</sup>Ritchie, Ecclesiastical Courts of York, pp. 105-7; Law, Forms of Ecclesiastical Law, p. 135; Houlbrooke, Church Courts and the People, p. 50.

<sup>141</sup>53 Geo III c.127; Burn, Ecclesiastical Law, 8th ed., 1:244, 244a, 244b.

<sup>142</sup>Rosalind Hill, 'The Theory and Practice of Excommunication in Medieval England', History 42(1957):1-11.

The costs of suits, always a contentious point, showed a very substantial increase between 1733 and 1851.<sup>143</sup> Significantly, the basic fees charged by proctors (for exhibiting a proxy, appearing in court, petitioning the judge) were slow to increase. The cost of hiring a proctor (5s.) and retaining him from term to term (3s.4d.) did not rise until the end of the eighteenth century and then remained stable at 6s.8d. and 5s. respectively.<sup>144</sup> The fees most subject to change were those that were divided between the proctor, the scribes and the registrar.<sup>145</sup> Citations, libels,

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<sup>143</sup>The Report of 1831-2 makes it possible to compare Wells proctors' fees, derived from bills of costs, with those charged at a number of other dioceses. Charges for appearances and acts sped were almost uniform in Chichester, Ely, Gloucester, Hereford and York. Bangor proctors, who had not actively participated in many years, submitted unusually low fees, while thriving Llandaff charged higher fees, comparable to those at Wells. Charges for libels and sentences varied widely from court to court and are difficult to compare as they usually depended on the length of the document. It is also impossible to calculate annual incomes for proctors where the volume of business, the duration of causes and the way work was distributed among proctors is so uncertain. PP 1831-2, xxiv, Report.

<sup>144</sup>Parson Woodforde paid 5s. to retain a proctor for a servant at Norwich in 1780: Diary, 1:293.

<sup>145</sup>Almost every respondent to the commissioners--including the Official Principal and the surrogate of Bath and Wells (p. 272)--claimed that fees, excluding in rare instances those of proctors, had remained unchanged in living memory. William Parfitt wrote that the fees he charged were identical to those he had seen on a two hundred-year-old table (p. 273). Many dioceses--but not Bath and Wells--submitted tables of judges' and registrars' fees that never rise above a

sentences, depositions and even bills of costs grew more costly from year to year. Documents lengthened, garnering larger fees for scribes who were paid by the line.<sup>146</sup> The fees registrars received for examining witnesses had doubled from 5s. to 10s. by 1819 and the sum they collected for each sentence appeared to rise around the same time.<sup>147</sup> While registrars and judges found such non-contentious work as institutions and the grant of probates far more profitable, proctors and scribes were directly dependent on the court for their livings.<sup>148</sup> In these circumstances it is not

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shilling except for sentences and significavits (Bangor, Chichester, Lichfield, Peterborough, Sarum, Worcester, York, Chester). Several tables included such items as fees for commuting penance (10s. in Bangor and Worcester, 3s.4d. in Sarum). The London consistory court charged higher fees, most closely approximating the fees suggested in the Report (pp. 431-2) and more in line with what proctors were earning from judicial business. This undoubtedly made suits at London very expensive. PP 1831-2, xxiv, Report.

<sup>146</sup>Houlbrooke, 'Decline of Ecclesiastical Jurisdiction', p. 248.

<sup>147</sup>The fees suggested for the London Consistory in 1831-2 allotted 5s. for the examination of a witness (2s.6d. to the examiner, 1s. to the judge and 1s.6d. to the registrar). At Wells the deputy registrar and the examiner were one and the same. Sentence costs are more difficult to compare: the increase from 13s. to 17s.8d. at Wells may be accounted for by the length of the sentences. The suggested fees for a sentence were £1.2s.4d. to the registrar, 10s. to the judge and 1s. to the apparitor.

<sup>148</sup>Houlbrooke, Church Courts and the People, p. 51. This was particularly true when proctors had no share in probate business.

surprising that unremunerative correction business was dwarfed by litigation between parties. Seemingly restricted by relatively low fixed fees, the proctors increased their earnings by charging for every letter, consultation and trip to the registry.<sup>149</sup> They, too, encouraged lengthy libels, though they cannot be accused of systematically raising the average length of causes in our period. (See Table IIIG). In the nineteenth century they worked openly with solicitors whose bills they added to their own. Judges taxed large bills severely, eliminating items they considered unnecessary, but the rising price of justice must have made the courts inaccessible to many.<sup>150</sup>

Theoretically, high costs need not restrict the use of the church courts to the affluent. A cause rapidly settled, as we have seen, could cost as little as 10s. and the courts continued to entertain these brief suits into the 1850s. Litigation remained inexpensive until witnesses were called, and causes that reached sentence

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<sup>149</sup>In fact, proctors' fees were regulated by custom and bills of costs were drawn up according to past practise without consulting any table: PP 1831-2, xxiv, Report, p. 274.

<sup>150</sup>See, for example, *Masters v. Moss*, D/D/C (1811), in which the plaintiff spent over £6 over a period of nine months on the services of a solicitor. A judge severely taxed a bill which included charges for a lengthy correspondence between the plaintiff's proctor and her employer, the Rev. Mr. Wait: *Board v. Hill*, D/D/C (1843).

were significantly more costly.<sup>151</sup> Parties could be admitted in forma pauperis and use the services of the courts without charge. Before seeking absolution, Mary King swore that she was not worth £5 a year with her debts paid and promised that she would pay her contumacy fees 'when ever she is able'.<sup>152</sup> Oaths for admission as a pauper were rare in Somerset; no more than a handful of defendants made use of them.

#### V. Conclusion

The debate on the effectiveness of the church courts goes back almost twenty years to Christopher Hill's provocative essay on the 'Bawdy Courts'.<sup>153</sup> Since that time, scholars have argued over Hill's claim

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<sup>151</sup>Houlbrooke, Church Courts and the People, p. 51. Many historians have suggested that high fees alienated the laity in earlier periods, but it is more likely that they objected to paying fees associated with compurgation (which were paid even by the innocent) and where lengthy litigation was used as a form of harassment.

<sup>152</sup>Frappel v. King, D/D/Ca 425 (1755). The admission of paupers was also rare at Gloucester. The oaths were the same, and the adverse party usually demanded a promise of eventual payment should the pauper's circumstances improve. Hockaday, 'Consistory Court of Gloucester', p. 225.

<sup>153</sup>Hill, 'The Bawdy Courts' in Society and Puritanism, 2nd ed., pp. 298-343. A Gloucester litigant of 1578 was prosecuted for denouncing the consistory as a 'bawdy courte': F. Douglas Price, 'An Elizabethan Church Official--Thomas Powell, Chancellor of Gloucester Diocese', Church Quarterly Review 128(1939):103.

that the courts broke down in the early Puritan era when they became a hindrance to the 'industrious' by interfering with trade, credit, working hours and property.<sup>154</sup> Hill identifies the courts with an ancien regime intent on suppressing the commercial spirit; his heroes are the Puritans, the House of Commons and the common lawyers who wrested control of property and commercial litigation from the corrupt and anomalous ecclesiastical judicial system. 'The unpopularity of the ecclesiastical courts was something more specific than "rivalry between laymen and clerks"', Hill observes. 'It resulted from a revolt of the industrious sort of people against the institutions and standards of the old regime'.<sup>155</sup>

Subsequent scholars have measured the volume of business, compiled statistics on court attendance and counted excommunications and absolutions (no simple task with a class of records so haphazardly preserved) in an effort to measure the popularity and efficacy of the courts.<sup>156</sup>

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<sup>154</sup>It was the church's jurisdiction over property matters that the common lawyers contested so sharply. Alimony, inheritances, tithes, debts and fees were often at stake in ecclesiastical litigation. And it can be argued that sexual incontinence, defamation and even brawls over church pews had their material ramifications in the birth of bastards, the value of one's reputation and the visual preservation of social hierarchy.

<sup>155</sup>Hill, Society and Puritanism, 2nd ed., p. 313.

<sup>156</sup>The drawbacks of this procedure, as noted above, are numerous. Colin Morris, on the basis of

Numbers in hand, they offer divergent interpretations of the data. Houlbrooke, in his article, 'The decline of ecclesiastical jurisdiction under the Tudors', finds legal weakness at the bottom of the expansion of business in the fifteenth century: declining respect for ecclesiastical laws fuelled a boom in instance litigation. After the Reformation, the clout of the courts was undermined by the cessation of corporal punishment, the abuse and overuse of excommunication, a decline in secular reinforcement and local cooperation and the availability of mechanical absolution.<sup>157</sup> Marchant, an apologist for the courts in the earlier period, retails a variation on this theme in his book, The Puritans and the Church Courts. Puritans consciously broke the ecclesiastical laws that inhibited their practises and their opposition is recorded in proliferating prosecutions for such crimes as absence from Church. The courts could not withstand the political alliance that drew together opponents of

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counting cases over a short period, came to the conclusion that the courts ceased to concern themselves with spiritual matters after 1350 in order to adjudicate secular causes. The spiritual matters he refers to are the morality of the clergy and the laity. Colin Morris, 'Consistory Court in the Middle Ages', p. 159.

<sup>157</sup>Houlbrooke, 'Decline of Ecclesiastical Jurisdiction', p. 243. The literature on the abuse of excommunication is vast, but one interpretation is offered in F. Douglas Price, 'The Abuses of Excommunication and the Decline of Ecclesiastical Discipline under Queen Elizabeth', English Historical Review 57(1942): 106-15.

the Stuarts and supporters of the common law, Parliament and English nationalism; they succumbed to Coke's propaganda and a national revulsion at all things royal. 'In the Tudor and Early Stuart period church courts reached the limit of their development both as dispensers of justice and as the means whereby ecclesiastical discipline was maintained'. In his Church under the Law, published almost a decade later, Marchant reiterates this theme: 'The church courts were unable to go beyond certain set limits, and this was really the cause of their stagnation and decline'.<sup>158</sup> The convergence of political and religious ideas celebrating individual rights and individual conscience created an atmosphere hostile to what was seen as a remnant from the days of Roman domination. 'What made the church courts peculiarly obnoxious', according to Hill, 'was their attempt to enforce standards of conduct, which had been appropriate enough to an unequal agrarian society, long after large areas of England had left such a society behind'.<sup>159</sup> As an institution, the unreformed bawdy courts were unable to keep pace with the political, economic and social transformations of the post-Reformation period.

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<sup>158</sup>Marchant, Puritans, pp. 9;3;1; idem, Church under the Law, p. 113.

<sup>159</sup>Hill, Society and Puritanism, 2nd ed., pp. 315; 309.



Houlbrooke, in his recent work on the courts, has not abandoned his critical position vis-à-vis the post-Reformation court. The Reformation, which provided an excellent opportunity, did not result in the necessary reform of the courts. Instead, the disruption of religious uniformity and the abatement of popular respect for spiritual sanctions contributed to the courts' terminal condition. Nonetheless, Houlbrooke has gone some way toward revising Hill's harsh appraisal. In his book, Church Courts and the People, he characterises ecclesiastical court procedure as 'a good deal more speedy, flexible, inexpensive and readily understandable than has commonly been allowed' and acknowledges that 'insufficient weight has been given to the peaceful settlement of causes by compromise and arbitration'. He also suggests that 'the correctional work of the courts, particularly in matters of social discipline, received a great deal more popular support than their critics have been prepared to admit'.<sup>160</sup> In addition to meddling with property, the church courts regulated social tensions at the parochial level. Restoring reputations, returning congregants to their proper pews, mediating between ministers and their unruly choirs, enforcing

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<sup>160</sup>Houlbrooke, Church Courts and the People, pp. 271-2.

public penance for bearing or fathering a bastard: all these could lower the temperature of a community.

Cheap and speedy justice, a means to patch up feuds and popular support of the decisions of the court did not come to an abrupt halt in 1570, or even in the seventeenth century. Hill's work, and that of his followers, has had the effect of prematurely sounding the death knell for the spiritual courts and it is now a commonplace in writing on the subject to glibly announce that the church courts did not long survive their restoration. Indeed, most of the major studies of the ecclesiastical courts limit themselves to the period before the Commonwealth; the courts under the Tudors, both before and after the Reformation, have monopolised scholarly attention. It is as if that hiatus of twenty years cannot be bridged. The world on either side, one would deduce from the literature on Somerset, were entirely different. Between 1616 and 1626 Arthur Lake, the Bishop of Bath and Wells, sat personally in court, refused to commute penance for money, and was known for delivering sermons of mortification after which he 'would take the offender to dine with him and exhort him to forsake his sin'.<sup>161</sup> Across the gap, Margaret Stieg is able to write that 'it seems probable that after 1660 the

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<sup>161</sup>Hunt, Somerset Diocese, p. 197.

ecclesiastical courts in the diocese of Bath and Wells were no longer so important as instruments of social and political control. Day to day oversight was no longer exercised, and the preventive character of ecclesiastical jurisdiction largely disappeared'.<sup>162</sup>

And yet the courts in Somerset died a slower, more complicated death. 'Following the perfunctory presentments, and the literary evidence', Sidney A. Peyton writes of Oxfordshire, 'it is not an illogical deduction that ecclesiastical discipline was a thing of nought by the eighteenth century. Yet it is easy to over emphasize its decay'.<sup>163</sup> The traditional white sheet penance for incontinence was still being assigned, and performed, in Somerset in the 1780s and compliance with penance orders of all kinds remained high throughout our period.<sup>164</sup> The material in this thesis should reveal that the courts remained active into the middle of the nineteenth century, and that they continued to regulate such intimate aspects of communal life as sexual behaviour and sexual defamation far longer than has been supposed. Whether

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<sup>162</sup>Stieg, 'Parochial Clergy', p. 130.

<sup>163</sup>Sidney A. Peyton, ed., The Churchwardens' Presentments in the Oxfordshire Peculiars of Dorchester, Thame and Banbury, Oxfordshire Record Society, vol. 10 (1928): lxxiii.

<sup>164</sup>Penance of Betty Phelps, D/D/C, box PB3 (1782); penance of Rebecca Rawlings, D/D/C, box PB3 (1782).

the courts remained in business because they limited their vigilance to the 'pleasant vices' of the lower orders,<sup>165</sup> because they perpetuated the power of a local elite or because they provided certain perennially popular services, will perhaps be discovered in the course of analysing their treatment of defamation between 1733 and 1850.

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<sup>165</sup>Hill, Society and Puritanism, 2nd ed., p. 343.

## SECTION TWO: DEFAMATION LITIGATION

## CHAPTER 4

### THE LEGAL CONTEXT

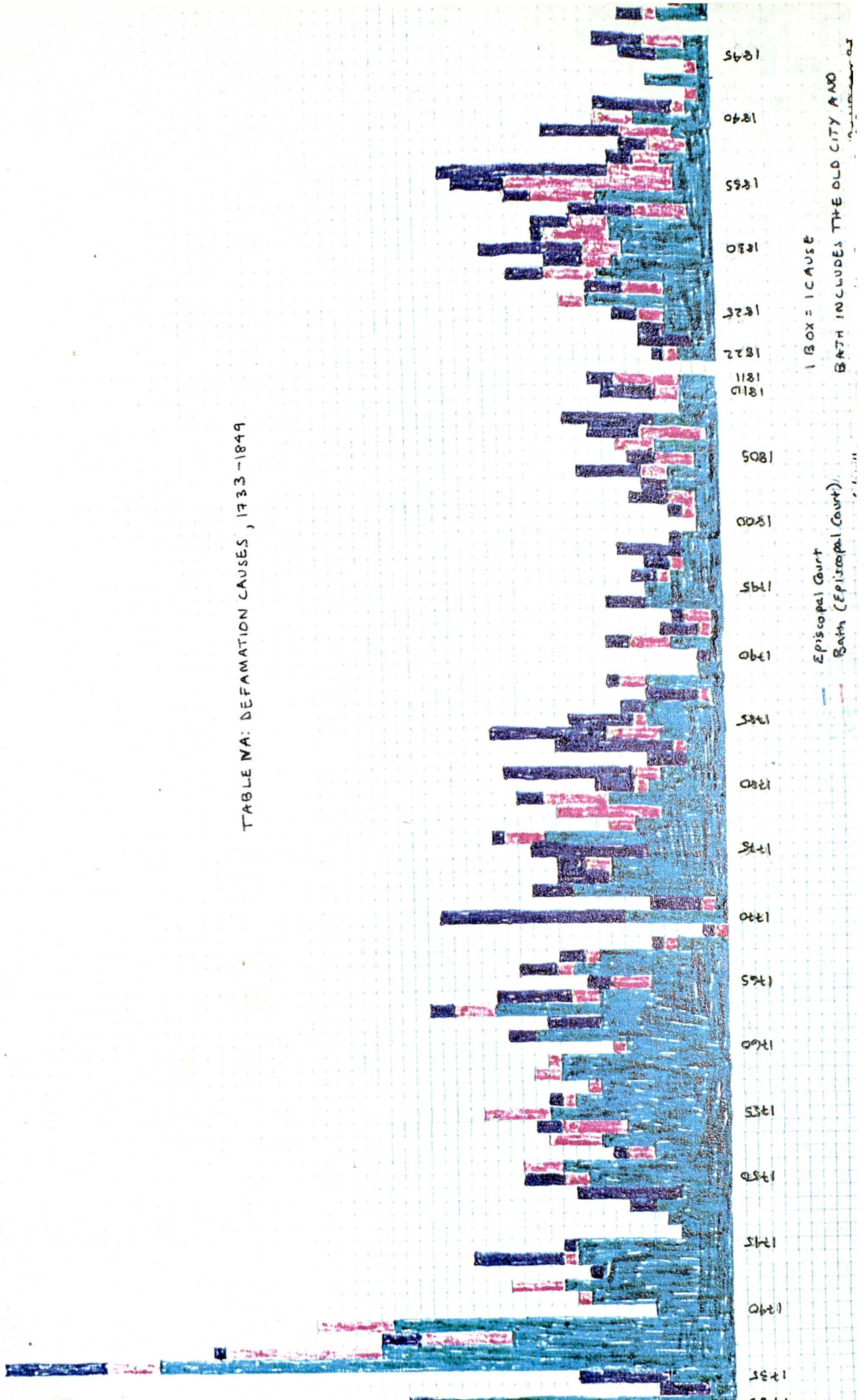
#### 1. Introduction

Defamation accounted for a fifth of the business of the episcopal court and nearly a quarter of the causes in the archdeacon's court between 1733 and 1850. Ecclesiastical defamation, like its common-law counterpart, could be committed verbally or in writing, though there are only two causes that involve written libel in the records of the diocese. A defamation suit successfully prosecuted in the church courts resulted, at most, in the payment of costs and some form of retraction or penance; at common law, damages could be awarded. The epithets from which a defamer could choose were, in theory, at least as numerous as the crimes catalogued in the previous chapter, but, in practice, defamation restricted itself to sexual subjects in our period, with only a tiny sprinkling of irreverent insults.<sup>1</sup> Irreverence came

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<sup>1</sup>The lesser charges of reproach, scandal and opprobrium, for which malicious intent had to be proven, were rarely pressed in our period except by male plaintiffs, but defamation and reproach were frequently combined in the same libel: Law, Forms of Ecclesiastical Law, 2nd ed. (1844), pp.46;48. The law distinguished carefully between defamatory and non-defamatory situations. Just as the law protected those who indicted others for crime from defamation suits, it also exempted

TABLE NA: DEFAMATION CAUSES, 1733-1849



increasingly under the rubric of brawling in church in the eighteenth century, and thus defamation came to be identified wholly with sexual offences.<sup>2</sup>

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witnesses from suits in the temporal courts arising from their testimony in defamation causes: 1 Ed 3 st. c.11; Burn, Ecclesiastical Law, 1:482. However, if an accuser failed in prosecution, he became liable to defamation suit: Law, op. cit., p.258. Floyer claims that words spoken in passion were not defamatory, 'being regarded by the Hearers no more than Words of one Non compos', but here legal practise diverged from theory. Many witnesses describe defendants as being in 'a great passion': Proctor's Practice, p.95. At least two defendants were alleged to be insane (Brooks v. Baillie, D/D/Ca 437 (1791) and Hellyar v. Maber, D/D/Ca 472 (1790)) but the difficulties they had in avoiding the consequences of their defamatory activities suggests that those non compos were not easily excused.

<sup>2</sup>In the fourteenth century, when the distinction between temporal and spiritual slander was less marked, the subject matter of defamation was far more varied: Woodcock, Medieval Courts of Canterbury, p.88. Thereafter, defamatory words became increasingly sexual: Houlbrooke, Church Courts and the People, p.80; R.G. Riley, 'The ecclesiastical control of parochial life in the Nottingham Archdeaconry 1590-1610 as illustrated by the causes of office' (M.A. dissertation, University of Nottingham, 1954), p.218, (in fact, Riley found the defamatory words too obscene to repeat in his thesis); Pemberton, 'Nottingham 1660-1689', Chapter V, part 1, pp.20-21. Sharpe analyses the libels in two samples of cause papers, one from the 1590s and the other from the 1690s. Fifteen out of the ninety-six libels in the first sample were for non-sexual insults and accused plaintiffs of being witches, scolds, disturbers of neighbours, perjurers, liars, cheats, drunkards, knaves and slaves. In the second sample of 103 causes, twenty-two involved perjurers, liars, cheats, drunkards, knaves, slaves and thieves, and nine were for miscellaneous insults, probably of a nonsexual nature. Three quarters of all these suits, and 90% of those involving female plaintiffs, were for sexual insults: Defamation and Sexual Slander, pp.7,10,15. Randolph Trumbach, in his study of defamation in eighteenth century London, indicates that libels were almost all of a sexual nature: 'Whores and Bastards. Women and Illicit Sex in 18th-Century London'



For the majority of the 1327 defamation causes identified in Act books, cause papers and miscellaneous sources such as Visitation presentments, the name, parish of residence, sex, marital status (for women) and, occasionally, occupation of each litigant are recorded.<sup>3</sup> Where the Act book entries are full, defamatory words are preserved along with the particulars of litigation, the outcome, the assignment and performance of penance and the taxation of costs. For a small number of causes penances alone survive. These provide the usual

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(unpublished paper, 1979). By the mid-nineteenth century, even Burn's Ecclesiastical Law recognised that defamatory words were likely to be sexual by including the information that periphrasis was equally defamatory, 'for what would in common and popular acceptance imply the crime of incontinence will amount to the same thing': 9th ed. (1842), 2:130.

<sup>3</sup>This, of course, does not include all defamation causes that came to the attention of the ecclesiastical courts in the diocese between 1733 and 1854. Gaps in the Act books (particularly the hiatus from 1812 to 1822, which is only partially bridged by cause papers) and the uneven survival of the records of peculiars immediately eliminate causes. Worst of all, perhaps, is the absence of records for the Archdeaconry of Taunton. It is possible that the Taunton court became inactive far earlier than its counterparts in Wells, but there is evidence that it still entertained defamation causes in the nineteenth century. In 1826, when Susan, the wife of Israel Cohen, brought a suit in the episcopal court against Robert Bryant of Bridgewater, his proctor claimed that the cause was under the Taunton jurisdiction and 'therefore not subject to the juris[diction] of this Court'. The cause was dismissed: *Cohen v. Bryant*, D/D/Ca 451 (1826). The court, as the parliamentary returns show, was still functioning at this date, but plaintiffs may have felt that their reputations were better protected at Wells.

biographical information and a record of the defamatory words. Circumstantial material survives for about 100 causes, ranging from the relatively unyielding libels to a full run of papers from citation through penance.<sup>4</sup> Richest, of course, are the depositions, in which witnesses recounted the events during private interviews with the deputy registrar and their memories were committed to paper. Cowardice, ugliness, age, disease and geography, though essential to the vocabulary of defamation, were not supposed to play any part in the deliberations of ecclesiastical judges and words modifying sexual insults were often excised from libels which simply stated that the defendant had said 'thou art you are or she is a whore'. Torrents of verbal abuse, however, did continue to find their way into depositions along with information that helps us answer questions about motivation, setting and relations between parties and witnesses. Witnesses left behind not only these accounts, but also an even fuller body of biographical data than litigants, including occupational information, age and a brief history of their geographical mobility.

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<sup>4</sup>In fact cause papers survive for more than 100 defamation causes, but the deteriorated condition of the documents made it impossible to view them. The causes that would have generated depositions are not so numerous (see statistics for plenary proceedings, Table IVB) that this loss is terribly damaging to our conclusions.

In the two chapters that follow we will consider what ecclesiastical law and legal institutions had to offer the victim of sexual insult and we will determine who used the church courts to clear their names. In the first chapter we will explore the legal and institutional context of defamation litigation: its internal flexibility; its sensitivity to both the needs of litigants, who early on showed a disposition to convert what had been office suits to litigation between parties, and to the attitudes of court personnel, who exercised considerable latitude in accepting and conducting these suits; and the place of defamation litigation in the business of courts in earlier times and in other dioceses. In the last endeavour we will be assisted by the parliamentary inquiry into the church courts of 1831-32. The wealth of statistics in the report confirm the almost unique longevity of the defamation jurisdiction (and of a vital church court) in Somerset. The opinions of the witnesses, senior court personnel drawn from around the country, alert us to the tensions between these men and their potential clients which accounted for the attenuation of court activity in so many dioceses.

Alterations in the interpretation of law and contests over jurisdiction between church and common law courts shaped the legal remedies available to litigants in our period, and like any litigant we will, in the

second half of this chapter, evaluate these remedies and the effectiveness of the church courts in coping with the problem of defamation. This, as we shall see, was not simply a question of handing down sentences and punishing offenders. It will be necessary to delineate the areas in which arbitration and settlement complemented or superceded the judicial process, to assess the level of compliance with the decrees of the courts, to discuss the issue of costs and to describe changes in the assignment of penance.

The second chapter is divided into three sections that reflect the biographical data included in the court records (gender and marital status, place of residence, occupation) and a fourth section that treats similar material provided for witnesses. The gender of litigants will be discussed in conjunction with the differential progress of the double standard amongst court personnel and their clients, and with the words people used to defame each other. The enforcement of the double standard by court officials and the much slower adoption of it by the courts' plebeian clients, by redefining sexual reputation, altered the gender profile of litigants at Wells and led to the almost exclusive devotion of the court to the complaints of married women. It also reduced the range of actionable language. Yet sexual insults remained an important expression of popular

characterological and sexual opinion and even in its limited form, defamatory language continued to define the boundaries of sexual tolerance within communities. In the next section we will consider the predilection of neighbours to defame each other and will outline the factors that made market towns unusually fruitful ground for insult and litigation. In the third section we will tabulate occupations and the occupational designations employed in libels and try to determine why the procedures and remedies of the church courts remained attractive to men and women of the lower orders, particularly to those drawn from the ranks of craftsmen and small tradespeople. The writings of four Somerset diarists will help us to describe the divergent attitudes towards reputation and its defence that separated the litigious classes from the non-litigious. Finally, we will assemble the biographical data for witnesses and use it to illustrate changes in the nature of litigation in our period. The qualities that litigants found attractive in their witnesses at different times tell us a great deal about their legal expectations, and the growing reliance on young, dependent witnesses indicates that winning a suit was becoming more important than seeking reconciliation.

Defamation litigation declined, though by no means steadily, throughout our period and the number of causes

heard at Wells had already been reduced to a trickle on the eve of the abolition of the jurisdiction. Any discussion of defamation litigation and of defamation litigants must take place against this background. We are, in these chapters, accounting for the remarkable longevity of this aspect of court business in Somerset and for its ultimate cessation. Thus, there are two major themes that animate the legal and statistical data that follow. First, the very flexibility of court procedure, and its susceptibility to pressure from litigants and court personnel, insured its continuation as long as court and clients remained in agreement as to the necessity and the purpose of defamation litigation. However, when this balance was upset, as it increasingly was in our period, flexibility could prove a fatal weakness. This leads us to the second theme, which is the way in which the church courts, and defamation litigation in particular, became a battleground for conflict, between plebeian clients who participated in a traditional popular sexual culture and court personnel who subscribed to the values of the polite sexual culture, over the definition of sexual reputation and its defence. This conflict is seen nowhere more clearly than in their differing dispositions towards the double standard and towards privacy and decorum. More firmly incorporated into polite culture at the beginning of the

eighteenth century, the double standard and its adjuncts were slower to penetrate a more egalitarian plebeian sexual culture that also valued publicity over privacy and communal harmony over individual restitution. It would be a mistake to see the conflict over defamation as a confrontation between two static cultures; plebeian sexual culture, especially, was evolving in ways that brought it closer to polite culture all the time. Rather, defamation litigation provides a unique illustration of the slow process of cultural change in the gradual adoption of the double standard, as it applied to sexual reputation, and in the continued resistance to standards of privacy and decorum that would have removed the defence of reputation from the public realm of restoration and penance and from the church courts themselves.

## II. Laws and Institutions

That all and singular the subjects of this kingdom of Great Britain who speak utter or declare any false opprobrious or defamatory words of to or concerning any other person tending to the injury or disgrace of his or her good name ought and are according to the ecclesiastical Laws of this Kingdom to be compelled to retract and recant such defamatory words and to restore to the injured person his or her good name and to be admonished to refrain from such like excess for the future.

These words, which invariably constitute the first article of a libel in a defamation suit, introduce the

unique remedies offered at ecclesiastical law while obscuring the erosion of jurisdiction that had been gaining momentum since the sixteenth century. Where originally the church courts had had cognisance of all defamation causes, a distinction had arisen between spiritual and temporal injury that led to a contest over jurisdiction between the common law and ecclesiastical courts that, in effect, left many litigants with a choice between two legal institutions and two distinctive remedies. It is in this choice that historians have sought clues to the intentions of litigants, and it is here that we may discern the survival of popular attitudes towards reputation that made defamation suits a mainstay of court business into the nineteenth century.

By the eighteenth century, words which were in themselves actionable at common law (those imputing a crime requiring corporal punishment, charging a person with having a contagious disorder, alleging corruption and inability in an office of trust and profit, or those which tended to disgrace someone in their trade or profession) automatically drew a wide range of verbal insult into the common law courts.<sup>5</sup> The church courts were

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<sup>5</sup>Burn, Ecclesiastical Law, 1:477; ibid., 6th ed. (1797), 2:126. I have found only two causes in the Act books where the judge rejected the libel as not actionable: Ford v. Deacon, D/D/Ca 429(1764) and Dawbin v. Merrick, D/D/Ca 448(1757).



left with a narrowly defined but not insignificant piece of jurisdiction: 'words which charge upon another or imply a direct offence, for which canonical purgation might be imposed on the party'.<sup>6</sup> Nor were the church courts left in clear possession of this jurisdiction, for if a plaintiff could show that their temporal advancement had been injured, as when a marriage was jeopardised by the claim that the prospective bride was a whore, or when a legacy was disputed as a result of doubt being thrown on an heir's legitimacy, a common law court could intervene and remove the cause from the purview of the church courts.<sup>7</sup> Mixed defamation was, in theory, solely within the jurisdiction of the common law courts but in practise the conjunction of temporal and spiritual

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<sup>6</sup>Law, Forms of Ecclesiastical Law, 2nd ed. (1844), p.46.

<sup>7</sup>Burn, Ecclesiastical Law, I:479. Men could also lose a marriage: Ecclesiastical Law, 6th ed. (1797), 2:132. The distinction between charging someone with keeping a bawdy house (a civil offence) and saying 'you are a bawd' (a spiritual offence) was also maintained in law, but practice in this and other matters was far more flexible: Ecclesiastical Law, I:479. 'Pimping' was a spiritual offence, and thus slander that included this charge would have been within the jurisdiction of church courts: Ecclesiastical Law, 8th ed. (1824), 2:129. What is most striking in the records I have studied is the absence of jurisdictional strife so common in earlier periods. There do not seem to have been any Prohibitions in defamation causes and judges were content to hear causes regardless of the nature of the words spoken. As defamation became a sexual matter, judges were on somewhat firmer ground, but there are obvious exceptions noted here and in the following chapters.

matter which commonly occurred in such phrases as 'poxy whore' gave the plaintiff a choice between commencing ecclesiastical proceedings for 'whore' or instituting a slander suit for 'poxy'.

A further choice arose when verbal insult was accompanied by physical violence or threats of physical violence. A victim could then prosecute for assault or swear the peace against his adversary. Just as some defamation depositions report such blows and threats, Articles of the Peace abound with examples of abusive and defamatory language. The word rogue, until the mid-eighteenth century considered sufficient to bring a defamation cause, continued to be a popular form of male insult. Richard Reeves, a harness maker of Taunton, claimed that his son assaulted him, called him a 'Damn'd Old Rogue', and threatened to set fire to his house.<sup>8</sup> A painter of the same town, William Dight, said to Thomas Stuckey, a fellmonger, '"I'll be damn'd if I don't lay a Trap and blow the Damned Bugger's Brains out"'.<sup>9</sup> William Pittard, a gentleman of Kingsbury Episcopi, was overtaken near Coombe Bridge by a wagon carrying Barbara Lye and two men. Lye began to abuse him, calling him a rogue and using 'indecent and bad Expressions'. When

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<sup>8</sup>Q/SI 411 (Bridgewater, 1791).

<sup>9</sup>Q/SI 429 (Taunton, 1809).

Pittard called her a 'bad Hussey' she became 'outrageous' and chased him with a pick until she was restrained by her companions.<sup>10</sup> Charles Willoughby, a grocer of Frome, claimed that Fredrick Gane, a yeoman of the same place, 'hooted at irritated and with oaths and imprecations abused and ill treated [him] by calling him a damned bastard and that he would bastardize the whole of [his] family and several times challenged or offered to meet [him] as a Gentleman'.<sup>11</sup> Paul Scudamore, the High Constable of Bathforum, was attending service at Maudlin Chapel, Lyncombe and Widcombe, on a Sunday in 1809 when William Burges entered and annoyed the congregation. The dialogue reported by Scudamore contrasts his own formal speech with the earthier reply of the drunken Burges. "How dare you come into a chapel during the time of Divine Service and interrupt the Congregation in this manner" [Burgess] replied "God bugger you and the service to if you don't be quiet I'll Portuguese thee".<sup>12</sup>

Women, for whom the term whore guaranteed a cause in the church courts, were denounced as bitches. Mary

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<sup>10</sup>Q/SI 414 (Wells II, 1794).

<sup>11</sup>Q/SI 435 (Midsummer, 1815): Articles of the Peace.

<sup>12</sup>Q/SR 378 (Wells, 1810): Information of Paul Scudamore. According to Scudamore, Burges was carrying a large knife with which he intended to carry out his threat.

Pearce, the wife of Philip Pearce, a Bedminster tanner, was plagued by the visits of Jane Davis who would come into her house and threaten to kill her. On one occasion Davis told Pearce, 'you Bitch now I'll have your Life and then I don't Care how soon I am hanged'. Martha Pow approached Elizabeth Broad with an open penknife and said '"Damn thee old bitch I'll tear thy old Devils heart out"'. Mary Shipton alias Walts alias Williams alias Butt proclaimed of Mary Evill, the wife of a Bath gentleman, 'Damn the Bitch look at her I'll open her head for her the first time that I can catch hold of her'. James Blackwell threatened to kick Mary Bendall of Weston saying, '"you damned old Bitch I will do thy Business for thee tomorrow morning - I will take care thee shalt not be here"',<sup>13</sup>

Yet even the word 'whore', backed up by a blow, could lead to a suit at Quarter Sessions rather than in the church court, as when Robert Hill and his son assaulted Jane Hancock, and the younger man declared, '"you damned bitch of a whore I have a great mind to kill you"'. Margery Kingston, a widow of Galhampton in North Cadbury, was subjected to the physical abuse and opprobrious language of Virtue Burrow, another widow, for four

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<sup>13</sup>Q/SI 406 (Taunton, 1786); Q/SR 377 (Wells II, 1809): Information of Elizabeth Broad; Q/SR 373 (Bridgewater, 1805): Information of Mary Evill, Q/SR 381 (Bridgewater, 1811): Information of Mary Bendall.

or five years before she lodged a complaint in 1761. On the most recent occasion, Burrow had come up to Kingston's door swearing 'she was a damn'd nasty old Bitch of a Whore and sd Damn thee I will be revenged of thee if it costs me my blood' and then scratched Kingston's face. A few days after the marriage of James Ree, a group of disgruntled bell-ringers announced that 'that mans wife is a whore and he is a cuckold'.<sup>14</sup>

The litigiousness of the English population, including its poorer members, is a favourite theme in eighteenth-century literature and a detailed, if occasionally idiosyncratic, knowledge of the law is repeatedly demonstrated in the legal strategies of plebeian litigants.<sup>15</sup> Jurisdiction, of course, is never defined solely by statute books, and competition between the two legal systems enabled litigants to consider such issues

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<sup>14</sup>Q/SR 377 (Wells II, 1809): Information of Jane Hancock; Q/SR 329 (Bridgewater, 1761): Information and examination of Margery Kingston; Q/SR 392 (Easter, 1814). Act books are missing for 1814, so we do not know if Rebecca Ree brought a parallel defamation suit.

<sup>15</sup>See, for example, the works of Smollett. In Humphry Clinker he often makes the point that servants knew the law as well as their masters and were always willing to use it, especially prosecutions for theft and assault, against each other. At one point he has Jerry give Clinker permission to beat up his servant 'provided he did manage matters so as not to be found the aggressor, in case Dutton should prosecute him for an assault and battery': Tobias Smollett, The Expedition of Humphry Clinker, (Harmondsworth: Penguin Books Ltd., 1967), p.246.

as the cost, the attractiveness of remedies and the effectiveness of enforcement before they decided whether their injury was temporal or spiritual. And though the ecclesiastical courts were courts of last resort for those who could discern no grounds for a suit at common law, plaintiffs were not forced to use the church courts.<sup>16</sup> A number of men and women chose to maximise their chances of legal victory by initiating suits for assault at Quarter Sessions while trying to mend their reputations at Wells, while others acted early to provoke their adversaries to utter the words necessary to commence a defamation suit. This tactic was recognised by witnesses in several suits. One witness to a dispute claimed to be disgusted by the 'great scolding betwixt all the...parties provoking each other to anger and as [he] supposes in order to seek revenge of each other'; the result was 'a great deal of unbecoming Language used on both sides'. The man unsuccessfully advised both sides to 'give off' and said 'it was a Shame they should talk to each other'.<sup>17</sup>

J.A. Sharpe argues that 'a residual acceptance of the medieval concept of slander as a breach of Christian

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<sup>16</sup>Law, Forms of Ecclesiastical Law, 2nd ed. (1844), p.47.

<sup>17</sup>Cole v. Martin, Cole v. Squire, Martin v. Cole, Squire v. Cole, D/D/Cd 134 (1743)(A.W.)

charity among members of a community' led plaintiffs to ignore jurisdictional boundaries and seek ecclesiastical justice.<sup>18</sup> Because people did not segregate temporal from spiritual abuse in the heat of passion, opportunities existed for the plaintiff to choose between church courts and the common law courts.

The remedies offered from the sixteenth century onward by the two legal systems differed in several ways. A suit for slander in the common law courts led to a decision and the payment of pecuniary damages. Defamation proceedings encouraged extrajudicial settlement and therefore did not guarantee a decision, nor could an ecclesiastical judge award more than costs to the victorious party. Instead, the plaintiff was able to mend his or her reputation and to make this restoration and the culpability of the defendant public through the performance of penance. Houlbrooke and Sharpe have both suggested that defamation suits provided results more satisfactory to the community as well as to the individual. 'It could be argued', writes Sharpe, '...that a

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<sup>18</sup>Sharpe, Defamation and Sexual Slander. p.8. This theme continued to find favour in legal texts in the nineteenth century: 'The condemned party is subjected to punishment on the ground of such words betraying malice and anger, and tending to destroy brotherly charity'. Law, Forms of Ecclesiastical Law, 2nd ed. (1844), p.47. That the church courts heard causes that should have gone to common law is not in doubt. See below and Defamation and Sexual Slander, p.11.

system allowing litigants ample opportunities to settle out of court might be preserving the peace more effectively than one which ensures a decision in every case'.<sup>19</sup> And if the cause went as far as sentencing, a plaintiff might be happier to see her good name restored than to collect damages at the expense of her reputation. Such a conclusion was, Sharpe continues, more conducive to reconciliation and the resumption of parochial harmony than one which exacerbated the breach between the parties by enforcing a money payment. Sharpe draws his evidence from the archdiocese of York in the sixteenth and seventeenth centuries, but what he says has some validity for eighteenth and even nineteenth-century Somerset. Though arbitration, always difficult to locate, leaves fewer overt traces in the records, large numbers of causes were abandoned before conclusion, which may indicate a settlement reached out of court. Frequent use, too, was made of summary procedure, which enabled litigants to end their causes in one or two sessions if defendants were willing to confess, perform penance and pay 10s. in costs. Many feuds were ended in this way, and the causes that went on to multiple sessions were few in number.

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<sup>19</sup>Houlbrooke, Church Courts and the People, p. 87; J.A. Sharpe, 'Litigation and Human Relations in Early Modern England--Ecclesiastical Defamation suits at York' (Paper delivered at the Past and Present Society Conference, London, 2 July 1980), p.10.



The court had not always accepted negotiation and compromise in defamation suits. Originally, these proceedings were meant to be ex officio, and when by custom they became instance causes, the responsibility of judges to correct defamers extended beyond any compromises reached by the parties: penance was a 'satisfaction to the Church' as well as to the individual and the community and could not be dispensed with.<sup>20</sup> Excommunication had been the automatic canonical penalty for uttering defamatory words, and ministers read a general sentence of excommunication to their parishioners four times a year covering this and other offences. A judge had to declare an individual excommunicate to make his sentence valid, and a successful suit served to procure a sentence and confirm the excommunication. Absolution was obtained only by performing the lengthy penance reserved for incorrigible excommunicants.<sup>21</sup> As defamation increasingly became a matter between individuals, office proceedings were discontinued and the court assumed its traditional role in instance causes, mediating and providing room for compromise. This role proved very popular. Defamation continued to lead to penance

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<sup>20</sup>For penance see Law, Forms of Ecclesiastical Law, 2nd ed. (1844), p.47. On the legal background, see Consett, Practice, 3rd ed. (1708), pp.337-40.

<sup>21</sup>Houlbrooke, Church Courts and the People, pp.48;82-3.

penance, but of a less public variety; and to excommunication, though for disobeying the decrees of the court rather than for trampling on the provincial constitution.

Defamation had accounted for a large part of court business since at least the fourteenth century. Even at this early date courts were treating defamation suits as litigation between parties, and were applying summary procedure wherever possible. Brian Woodcock has charted the rising significance of these causes at Canterbury from 1372 onward; in Lincoln fourteen out of ninety causes in 1430-31 were for defamation. After the mid-fifteenth century Canturbury justices were hearing at least fifty defamation causes a year, and these causes were a larger and larger proportion of the total number of causes heard. By 1522, defamation was the most numerous type of cause at Canterbury. At Bath and Wells, where the volume of causes was about the same, defamation accounted for one-fifth of instance litigation in the fifteenth century. Between 1580 and 1640 almost half the court business at Nottingham was for words, a fact which Houlbrooke places in the context of a general boom in instance litigation produced by declining respect for ecclesiastical laws. By the 1630s, when Prohibitions had removed much lucrative business from the ecclesiastical courts, defamation was the commonest type of cause in the Norwich consistory. York, which has been studied by both

Marchant and Sharpe, provides the longest run of statistics. Defamation suits grew in importance from the mid-sixteenth century, representing close to half of the new causes entering the courts in the sixty years before the Revolution. The Restoration found defamation litigation at undiminished levels: between 1665 and 1705 causes doubled in number and had nearly trebled by 1720, when they declined along with the rest of court business.<sup>22</sup>

The people of Somerset continued to bring defamation causes to the church courts of their diocese as long as they were legally entitled to do so, and long after they had given up prosecuting the sexual offences imputed in them.<sup>23</sup> Yet this popular support was not echoed in the evidence and report of the parliamentary commission of 1831-2. The commissioners and the court personnel they interviewed reacted with embarrassment and

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<sup>22</sup>For Canterbury: Woodcock, Medieval Courts of Canterbury, pp.87-8. Most of these causes were summary. For Lincoln: Morris, 'A Consistory Court in the Middle Ages', p.157n. For Bath and Wells: Dunning, 'The Wells Consistory Court', p.59. For Nottingham: Marchant, The Church Under the Law, p.194. For Norwich: Houlbrooke, 'Decline of ecclesiastical jurisdiction', p.247; Church Courts and the People, pp.87-8. For York: Marchant, The Church under the Law, p.62 and Sharpe, Defamation and Sexual Slander, p.9.

<sup>23</sup>This to some extent undermines Houlbrooke's assertion that 'The community's concern with sexual discipline helps to explain parties' sensitivity to imputations of sexual misconduct and their readiness to go to law upon what at first appear trivial grounds': Church Courts and the People, p.87.

revulsion to the sexual content of defamation, to the sorts of people who brought these suits and to the survival of public penance for such a crime. The Chancellor of the diocese of Exeter found them 'a very unpleasant description of suit, and I should think might be better settled elsewhere'. The Chancellor of Salisbury told the commissioners that defamation suits 'used to be very frequent, but I think I have stopped the worst of them, by giving only a nominal sum for costs'. He was asked if defamation causes were 'made use of by the lower classes of people to harass one another?' 'Just so', he responded, 'in consequence of a little spite of one against the other, neither of them possessing the means of carrying on the suit, and knowing that if they got the suit the other party would be condemned in costs, and probably thrown into prison, from being unable to pay them'. The Commissary and Vicar General of the Archbishop of York answered 'Entirely' when he was asked 'Are your causes for defamation principally or altogether among the lower classes of people'? He had ceased to award costs because he felt there was always provocation on both sides; instead he limited his judicial role to admonishing the parties against the use of bad language. The deputy registrar of the Chester consistory apologised for the thriving state of defamation litigation in his

diocese, and well he might in that company, for sixty-two defamation causes were heard in the Chester courts between 1827 and 1829, more than twice as many as were heard at Bath and Wells. Even he admitted that defamation causes, which constituted 24% of his courts' business in those years, were providing the fees that could make a proctor's salary as high as £500 per annum. His solution was to adhere strictly to procedure and to allow his son, a proctor and a notary public, to examine witnesses in these unimportant causes. In the London consistory, the deputy registrar was pleased to announce that defamation causes were rapidly falling off, perhaps because a summary proceeding cost £2, well above the cost at Bath and Wells. The registrar of Norwich diocese also discouraged defamation causes, awarding costs of three or four guineas when the defendant confessed, and much higher ones when full plenary proceedings were undertaken. When questioned about the class of litigants he replied, 'I should say the lower orders, very small tradesman and mechanics, and people of that kind'.<sup>24</sup>

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<sup>24</sup>pp 1831-2, xxiv, Special and General Reports made to His Majesty by the Commissioners Appointed to Inquire into the Practice and Jurisdiction of the Ecclesiastical Courts in England and Wales, pp.97-8 (Exeter); 113 (Salisbury); 127 (York); 177;187;183 (Chester); 201 (London); 211;216 (Norwich).

The parliamentary witnesses were equally disturbed by the spectacle of public penance, and several denied any personal knowledge of the ritual. This was not surprising, as most offences warranting full public penance had ceased to be prosecuted in their courts before this time, and judges traditionally had great discretion in assigning penance for defamation. Consett, writing in the late seventeenth century, noted that penance might be assigned at any place, and 'according to the quality of the Cause, and of the Persons'.

If the Defamatory words were uttered in a publick place, then the Penance is to be done publickly: Though it is wont to be done in the Parish Church of the Party defamed, in time of Divine Service in presence of the Party, (if he thinks fit to be present;) but Linnen Vestments must not be put on, as in causes of correction. But if these Defamatory words are uttered in a private place, then the Penance is to be done in the House of the party defamed, or in the House of some honest Neighbour.<sup>25</sup>

Half a century later, Floyer advised proctors that a defamation penance was essentially private, to be performed in the vestry in the presence of the plaintiff, the minister and the churchwardens.<sup>26</sup> This accorded with practise in Somerset at that time, and the semi-private penance, performed on a Sunday in the vestry

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<sup>25</sup>Consett, Practice, 3rd ed. (1708), p.338. (Also in Law, Forms of Ecclesiastical Law, 2nd ed. (1844), p.47).

<sup>26</sup>Floyer, Proctor's Practice, p.119.

of the parsonage before official witnesses was assigned throughout our period. It was rapidly overtaken in popularity, however, by penance performed in the church itself, before whoever happened to be present. This removal of the ritual of punishment and reparation from the neighbourhood of the litigants may have been part of the conciliatory process, aimed especially at reducing costs.

The parliamentary witnesses, however, viewed penance with suspicion and suggested that a too public display could backfire on the victorious party and add fuel to the rumour litigation was meant to quash.<sup>27</sup> No longer acclimated to public ritual, these men supposed that such acts could lead only to ridicule. They were also uncertain whether litigants of the lower orders had reputations worthy of repair. Even Joseph Phillimore, the staunchest champion of the church courts to give evidence, was convinced that defamation suits existed for the benefit of upper class women, who valued their

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<sup>27</sup>At Exeter, the chancellor only assigned penance to be performed in the parsonage or vestry; at Salisbury the same official had assigned penance three or four times in his career, and it had always been performed in the vestry; penance was only rarely assigned at London, and, at Norwich, in what looks like a throwback to the days of compurgation, penance was heard in church before six to ten friends of the plaintiff. (PP 1831-2, xxiv, Report, pp.100;114;63;216. Trumbach notes that penances issued by the London Consistory in the eighteenth century were performed in parish churches, but suggests that compliance with these and other decrees declined over the course of the century: 'Whores and Bastards', p.4.

reputations more highly than women of other classes. His suggestion, that all contentious litigation be removed to the superior courts in London, would have effectively barred plaintiffs of the lower orders from initiating defamation suits.<sup>28</sup> The Chancellor of Exeter only assigned penance in a case where the parties were of a 'higher situation in life than are usually involved in such suits', and this was private penance, performed in the vestry or the minister's house.<sup>29</sup> The Chancellor of Salisbury noted that he had only assigned penance three or four times in defamation causes, and that the penances had always been private and had never drawn crowds. He did recall that

once a great number were brought together into the cathedral, upon the supposition that a woman would do penance there; she was a notorious woman, and many hundred people were assembled in the Cathedral; it was in a defamation cause; the crowd was very great, and I had some difficulty to preserve order.

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<sup>28</sup>The only witness who did not shrink from defending ecclesiastical jurisdiction over defamation was Joseph Phillimore, D.C.L., advocate of Doctors Commons and Chancellor of Oxford diocese. His views on female reputation are retailed in the ninth edition of Burn's Ecclesiastical Law, which he revised in 1842 (2:139) and his jurisdictional reforms are set forth in PP 1831-2, xxiv, Report, pp.151-2. Cf. with the views of the Chancellor of Exeter (p.100) and the deputy registrar of Chester, who was convinced that plaintiffs usually did more harm to their characters by pursuing causes where so little occasion was presented for defence or justification (p.177).

<sup>29</sup>PP 1831-2, xxiv, Report, p.100.



In fact the proceedings in the ecclesiastical court had been abandoned because the woman was so violent, and she was prosecuted instead at Quarter Sessions. Labouring under the misapprehension that she would have had to don a white sheet to perform penance, he concluded that 'a very disgraceful scene of riot would have ensued'.<sup>30</sup>

The commissioners, in their report, suggested that jurisdiction for defamation should be shifted to petty sessions where, presumably, offenders would be fined. They had at least two reasons for advising such a change. For one, defamation causes were an obstacle to their crusade to abolish inferior jurisdictions. They recognised a need for some local, inexpensive form of justice for the defamed, and certainly did not go as far as some of their witnesses in asserting that the jurisdiction be entirely erased.<sup>31</sup> They also saw defamation causes as a source of odium, undermining the image of the church courts. 'Causes of Defamation are now of unfrequent occurrence in the Court of Arches and Consistory of London, but they still prevail to a considerable extent in many of the jurisdictions in the Country', they wrote, and it was in the country that they found those perversions of justice, particularly imprisonment for failure

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<sup>30</sup>Ibid, p.114.

<sup>31</sup>For instance, the deputy registrar of Chester, ibid, p.177.

to appear in answer to what they considered trivial charges and failure to pay small sums, that diminished popular respect for the ecclesiastical courts.<sup>32</sup> They were equally horrified by reports of enormous bills of costs generated over a period of years - one witness described a cause that cost the vanquished party £700 - in causes that were productive of very little good.<sup>33</sup>

Witnesses were not called from the diocese of Bath and Wells, and we do not know whether Edward or Peter Lewis Parfitt would have agreed with the bishops, solicitors and advocates assembled in London. The statistics they submitted in their returns reveal that defamation was still an important part of court business in Somerset, and the Act books confirm that penance continued to be assigned and performed in many causes. Twenty-seven percent of the new causes in the episcopal court between 1 January 1827 and 31 December 1829 were defamation causes. In ten jurisdictions defamation accounted for a larger proportion of court business: Gloucester (31%), Bristol (58%), Bristol at Blandford (40%), Chichester

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<sup>32</sup>Ibid., 'General Report', p.63. According to Burn, the word 'whore' was actionable at common law by custom in London. This might have diminished ecclesiastical defamation business in some parts of the city, but, as Trumbach has shown, sexual slander was high on the agenda of the London consistory: Burn, Ecclesiastical Law, I:481; Trumbach: 'Whores and Bastards', passim.

<sup>33</sup>pp 1831-2, xxiv, Report, pp.17-24.

(56%), Sarum (63%), Worcester (38%), St. David's at Carmarthen (38%), Llandaff (31%), York consistory (40%) and Carlisle (32%). But many of these dioceses had ceased to hear more than a handful of causes and only four courts besides Wells heard more than thirty defamation causes in that last period: Gloucester (36), St. David's at Carmarthen (32); Llandaff (35); and Chester (62).<sup>34</sup> The Chester consistory was so active that defamation accounted for only 24% of its business.

An earlier return, covering the three years preceding 1 January 1827, included inferior jurisdictions as well as the diocesan courts. At Wells, defamation accounted for 25% of diocesan court business, and the archidiaconal courts and the many peculiar jurisdictions contributed another eight causes to bring the total to thirty defamation suits. This made the proportion for the diocese slightly lower than the national average of 25%, but the variation from diocese to diocese was more significant. Only six courts equalled or exceeded the number of defamation causes heard at Bath and Wells, and

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<sup>34</sup>The list of causes submitted to Parliament (PP 1831-2, xxiv, Report, pp.388-390) included twenty-nine initiated in the episcopal court between 1 January 1827 and 31 December 1829. The names of litigants and dates commencing and ending suits tally with the Act books but one cause, begun in 1828, seems to have been overlooked: *Waters v. Thomas*, D/D/Ca 451(1928). The statistics for the other dioceses are in Appendix D of the same Report, p.567.

most of them will be familiar: St. David's at Camarthen (26 causes; 45%); Gloucester (42 causes; 40%); Llandaff (44 causes; 35%); Lichfield and Coventry (22 causes; 18%); York consistory (36 causes; 90%); and Chester, excluding Richmond, (62 causes; 22%).<sup>35</sup> A smaller number of defamation causes were heard in the second three year period (331 as opposed to 395), while the total number of causes was higher in the later period (1903 as opposed to 1508). If we eliminate the dioceses that heard no causes in either period, defamation represented 25% of court business in both periods. Accurate comparisons, however, are difficult, because inferior jurisdictions--which handled much defamation business--were excluded from the later figures, and because the London courts and several dioceses did not submit returns for the earlier period.

There was, however, a great deal of variation in the proportion of court business defamation suits represented over our period of 120 years. (See Tables IIIA and IIIB) Defamation litigation had reached levels in the 1730s that would not be achieved again until the 1820s when, of course, many fewer causes were being heard.<sup>36</sup> Defamation causes averaged 18% of the

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<sup>35</sup>pp 1828, xx, Returns.

<sup>36</sup>Whether the volume of court business in the 1730s represents a peak or is consistent with the level

episcopal court's business between 1733 and 1799 and 28% between 1800 and 1854. In the archdeacon's court, the figures were higher (20% and 35%) but the trend was the same. Though there may be some need to account for the relative significance of defamation in the 1740s and 1780s, a comparison between the two courts shows that there is no relation between lulls in the episcopal court and those in the archidiaconal court. The nineteenth century pattern culminating in the domination of the court calendar after 1822 is, however, roughly the same in both courts.

We might hazard the guess that the peaks and troughs of the eighteenth century had more to do with the internal dynamics of the courts than with alterations in defamatory behavior. Houlbrooke, in discussing the sex of litigants, demonstrates that institutional priorities could dictate the content of court calendars:

At Norwich women ceased to rival men in the number of suits started in the course of a period, and the proportion of male plaintiffs at Winchester grew. It is tempting to put this down to some change in attitude, to men's becoming relatively more sensitive to imputations of sexual misconduct. A more likely explanation of the Norwich figures at least is that women were more apt to embark on a simple suit, sparked off for instance by a vigorous slanging match with a neighbour, which raised no complex legal issues and

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of court activity in the early eighteenth century is not certain. The Act books for this period survive erratically, and a quantitative analysis would be impossible.

could easily be settled, the type of suit, in fact, which proctors might tend to discourage when the pressure of more complex and lucrative business was heavy.<sup>37</sup>

The picture in our period is quite different from that described by Houlbrooke: proctors could not afford to be too choosy as court calendars shortened and large pieces of jurisdiction were hacked away. They could, of course, express their disapproval of defamation litigation indirectly by determining the way in which causes were conducted and by complying readily with statutes which profoundly altered the nature of such litigation. There is no evidence, however, that nineteenth-century court personnel, no matter how they felt about defamation causes, ever refused to handle them; and in the 1830s, the decade that began with the parliamentary inquiry, the number of defamation causes in both courts rose absolutely and proportionally (See Table IVA).

The defamation boom in the episcopal court will be analysed in Chapter 8, where we will take up the subject of defamation in Bath in the nineteenth century. The multiplication of Bath causes, however, would have had no effect on the activities of the archidiaconal court, and its increasing monopolisa-

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<sup>37</sup>Houlbrooke, Church Courts and the People, p.81.

tion by defamation litigation is testimony to the continuing need for a tribunal to settle disputes over reputation. Litigants, as Phillimore pointed out in his evidence to the commission, had nowhere else to go.

### III. Compliance and Effectiveness

One measure of the effectiveness of the church courts is the extent to which litigants complied with the decrees issued by judges. We would want to know how many appeared at Wells when cited; how many performed penance when assigned; and how many paid the costs taxed by the judge at the end of the proceedings. Unfortunately, it is difficult to assign numerical values to most of these activities. We may know how many defendants failed to appear in court, but we cannot always know whether this seeming lack of compliance obscures an out-of-court settlement, a change of heart on the plaintiff's part, or obstinacy on the defendant's.<sup>38</sup> Then, large numbers of

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<sup>38</sup>F.D. Price demonstrates that nonappearance could increase during the reign of an unpopular official. In 1579, 75% of the defendants cited to his court failed to appear before Thomas Powell, who as chancellor presided over the Gloucester consistory from 1560 to 1579 'despite a life of amazing corruption and immorality': 'An Elizabethan Church Official', p.94. In a later article, Price is further able to show that nonappearance affected as few as 10% of the causes in 1552, before Powell assumed

defendants failed to appear at the first session and some went so far as to suffer excommunication before arriving at Wells. In some cases there were good excuses for absence: time, distance and ill-health could all interfere with a desire to comply with a summons. Generally, judges and adverse proctors were lenient and reserved the pains of excommunication for several sessions, hoping that the missing party would show.<sup>39</sup> Finally, some defendants participated in the early sessions of a cause before disappearing. These people were more likely to be excommunicated, but occasionally their absence was countenanced and the cause eventually dropped. With only the terse entries in the Act books to guide us, we cannot make sufficiently subtle the distinctions between compliance and noncompliance. The grey areas of the

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office, and that many of those who had remained excommunicate for years in defiance of the decrees of the court sought absolution after Powell's fall: 'The Abuses of Excommunication and the Decline of Ecclesiastical Discipline under Queen Elizabeth', English Historical Review 57(1942):107;110. Ritchie suspected that approximately one-quarter of all defendants failed to appear but nearly all those who suffered excommunication (which he considered a real disability to the litigious Elizabethans) sought absolution: Ecclesiastical Courts of York, p.186.

<sup>39</sup>The Chancellor of Salisbury told the Parliamentary commissioners that he had little trouble with nonappearance, that it was usually occasioned by ignorance, and that he always reserved the pains of the absentee: PP 1831-2, xxiv, Report, Appendix A, p.112.



Act books may well be the areas in which settlements were made, and we cannot afford to overlook them in our calculations.

Persistent under-recording makes it even more difficult to ascertain the outcome of causes. While a final entry reading 'pax', 'peace', or 'ended' may indicate the satisfaction of all obligations, either by performing penance and paying costs or by a settlement, the majority of causes come to more abrupt halts. We can only be sure that penance was performed when a certificate was returned or the judge permitted the defendant to apologise in court. Likewise, acts that occurred in judges's houses or elsewhere outside court, such as late confessions and absolutions, were not always recorded. The two stages of excommunication, the initial declaration and then the promulgation of a schedule of excommunication which was read in the culprit's parish church, were not clearly distinguished in the Act books; signification to the court of Chancery and appeals to the court of Arches were also noted without any clue as to outcome. Again, the distinction between intention and action is difficult to discern, and many threatened excommunications, significations and appeals were never more than that.

Causes that disappeared from the Act books, as they frequently did, with the assignment of penance and costs, or the promulgation of a sentence, are equally mysterious. Without corroborating evidence we cannot tell whether penance was performed or whether costs were paid. Plaintiffs may have been satisfied with a declaration in their favour and willingly overlooked the formal conclusion of the cause, even absorbing its costs; a decree or sentence may also have prompted settlements that did not depend on the apparatus of the courts for their enforcement. Occasionally, traces of these agreements are found. Hannah Marks failed to appear to answer a charge of defaming Elizabeth Clark in 1840 and her contempt was signified to Chancery. At the next session, the plaintiff's proctor alleged that Marks's contempt had been unintentional (a formula) and that the defendant had made a satisfactory apology. Marks was absolved and the cause was ended. Susannah Hill, the wife of David, was also signified for nonappearance before she responded to a citation for defaming Elizabeth More, the wife of Joseph Emery. Two witnesses were sworn before Emery's proctor reported that the 'Defendant had made confession to his client and satisfied her the Costs incurred and that he sh'd not proceed further'. Jemimah Collins, the wife of

James, immediately confessed to calling Elizabeth Balch 'whore and Meddidum Somers's whore', was assigned a penance in Yeovil vestry and condemned in costs. A notation in the Act book was added saying 'afterwards ended' and a private apology may well have replaced penance.<sup>40</sup>

Costs are the stickiest point of all, for their payment was largely a matter between the litigants or their proctors. We know when 10s. changed hands in the court room after the conclusion of a summary cause and we know when costs were assigned or even taxed.<sup>41</sup> But it is usually only their nonpayment that is recorded and that when litigants were determined enough to petition for excommunication of adversaries who failed to pay up.<sup>42</sup>

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<sup>40</sup>Clark v. Marks, D/D/Ca 442(1840); Emery v. Hill, D/D/Ca 452(1830); Balch v. Collins, D/D/Ca 478(1783)(A.W.).

<sup>41</sup>For instance, when the plaintiff's proctor alleged 'his costs were satisfied' after Marth Davis confessed in court to calling Elizabeth Westwood a whore: Westwood v. Davis, D/D/Ca 442(1839). Costs for summary proceedings were at least 10s. at that time; is it likely that Davis, the wife of a joiner, would have had that much money on hand?

<sup>42</sup>In at least thirty-one causes defendants were excommunicated for neglecting to pay costs after performing penance. Thirteen of these causes required a parish penance of some sort. The larger number of excommunications in the later decades of our period (seven in the 1830s alone) may have been caused by multiplying costs which defendants simply could not meet. James Tinklin confessed to defaming

Thus, we may only speculate as to whether the rather high rate of compliance with penance decrees was echoed by an equal eagerness to pay costs; nor do we know whether the performance of penance was commonly considered sufficient by victims of defamation, who then paid their own costs.

The figures in Tables IVB and IVC together provide as much of a statistical answer to the question of compliance as is practicable from an analysis of the Act books. These tables demonstrate that while plenary proceedings attracted a similar proportion of litigants decade after decade, the volatile relationship was that between settlement and the choice of summary procedure. This may be seen more easily by comparing columns (a) and (d) in Table IVB. The latter group includes causes that

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Joanna Grist, performed his penance in the chancel of Widcombe Church after some delay, and then ignored a monition to pay £1 5s. 2d. in costs. Later, he appeared at Wells and was personally admonished to pay up. This he refused to do and suffered immediate excommunication. He is the only defendant I have identified who chose to defy the court in person; he may have been incensed because Grist had also taken his wife to court (she chose not to appear and not to pay, and her cause was ended) and was the defendant in a suit prosecuted by another relative, Anne Tinklin, which continually foundered on the rocks of settlement: Grist v. Tinklin; Tinklin and Tinklin v. Grist, D/D/Ca 417(1738). There are also causes in which the payment of costs (usually the minimum, 10s., paid in court) preceded performance of penance and defendants were subsequently excommunicated for failing to perform penance. Because procedure usually stipulated the performance of penance before costs were taxed, there was little scope for this sequence of events, no matter how attractive it may have been to offenders. Thus, any determination of the relative weight of penance (which became increasingly private) and costs (which

TABLE IVB

	<u>Type of Proceedings</u>									
	(a)		(b)		(c)		(d)		(e)	
	Summary		Plenary		Switch to Summary**		Ended Before Choosing		?	
1733-1739	53	(26%)	66	(33%)	9	(4%)	70	(34%)	5	(2%)
1740-1749	29	(24%)	39	(32%)	3	(2%)	42	(34%)	9	(7%)
1750-1759	69	(48%)	32	(22%)	3	(2%)	39	(27%)	0	
1760-1769	78	(59%)	26	(20%)	7	(5%)	18	(14%)	4	(3%)
1770-1779	82	(59%)	29	(21%)	8	(6%)	21	(15%)	0	
1780-1789	60	(58%)	16	(16%)	7	(7%)	18	(17%)	2	(2%)
1790-1799	29	(48%)	18	(30%)	5	(8%)	8	(13%)	1	(2%)
1800-1809	37	(53%)	10	(14%)	4	(6%)	19	(27%)	0	
1810-1819*	9	(18%)	8	(16%)	0		5	(10%)	27	(55%)
1820-1829*	33	(38%)	25	(28%)	4	(5%)	15	(17%)	11	(13%)
1830-1839	37	(26%)	38	(26%)	7	(5%)	61	(42%)	1	(1%)
1840-1849	9	(17%)	15	(28%)	2	(4%)	27	(51%)	0	

\* The absence of Act books for the years 1812-1822 means that all the figures for these two decades are underestimates. Cause papers show that many of the causes tallied in the final column followed plenary procedure.

\*\* A small number of defendants switched to summary proceedings by confessing at some point after giving issue to the libel; some waited as late as the day of sentencing before doing this. Also included in this group are defendants who were excommunicated for failing to appear, some of whom had to be absolved before confessing. Last minute confessions could be used as a means to guarantee privacy. Elizabeth Taylor gave a negative issue to a libel presented on behalf of Lydia Hutchings. The libel was never proved, owing to the absence of the plaintiff's proctor, but after nine sessions Taylor appeared at Justice Turner's house, confessed, performed penance and was assigned costs: *Hutchings v. Taylor*, D/D/Ca 438 (1797).



### Notes on Outcome Table

- \* Note gap in Act books, 1812-1822.
- \*\* This category includes causes that were ultimately dismissed or led to the signification of the defaulting party.
- \*\*\* Because it is difficult, particularly in the later period, to distinguish between dismissals and informal abandonments, the bulge from the 1820s onward probably represents an increase in the latter as large numbers of defendants once again chose to ignore citations.

ended before reaching court and were recorded along with the notation 'peace', 'pax' or 'ended' when they first appeared in the Act books: causes in which the defendant never appeared and was excommunicated; and causes that were dismissed or abandoned at an early stage, with or without the defendant appearing. Many of these causes are tallied among the settlements in Table IVC, though only some of them conform to the pattern of agreements negotiated between parties. For this and other reasons the figures arrived at for settlements in Table IVC are very approximate. Just as their numbers could be reduced by eliminating those causes abandoned by weary plaintiffs, the performance of penance and payment of costs could provide further room for negotiation, and doubtless some causes where those remain in question could be classed among the settlements. In the second half of the eighteenth century settlements declined, particularly as more defendants chose to confess and submit to summary procedure, but in the nineteenth century defendants began to avoid the courts in increasing numbers and fewer of them confessed their crimes when they did appear.<sup>43</sup>

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increased over time) in the minds of litigants is difficult to establish.

<sup>43</sup>Defendants did not have to confess to the entire libel, even in a summary proceeding. John Bartlett admitted to calling Elizabeth Teadstall a whore but denied saying 'poxed whore' or that she had borne a bastard. Apparently this was agreeable to both parties,



This shift is reflected in the outcome of plenary causes in this era. The proportion of defendants who entered into plenary proceedings was fairly constant between 1733 and 1854, but the lengths to which litigants carried the proceedings varied considerably. Only fifty-nine causes are known to have gone as far as sentencing between 1733 and 1854, and though this is an underestimate, due to gaps in the records, it probably is not far off.<sup>44</sup>

This includes four sentences read against plaintiffs, but it does not include dismissals by final or interlocutory decrees, which may have occurred at the same point in proceedings but carried a different legal weight. There was less than a sentence a year throughout the eighteenth century, and only in 1740-9, when eight sentences were read, was the proportion of causes culminating in a

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for he performed penance in open court: *Teadstall v. Bartlett*, D/D/Ca 424(1751). Defendants could also confess to the fact but add qualifications which might mitigate the costs or the severity of penance: *Law, Forms of Ecclesiastical Law*, 2nd ed. (1844), p.174.

<sup>44</sup>This is not an unusual pattern. Houlbrooke found that most of the sixteenth-century causes he studied were abandoned or peacefully settled before sentence was read: 'Decline of Ecclesiastical Jurisdiction', p.254. Marchant suggests that many causes were dropped as a result of one of two factors: plaintiffs frequently did not consult with a proctor beforehand, simply sending a description of the dispute in a letter, and insufficient attempts at settlement before the commencement of the suit: *The Church under the Law*, p.57. Sharpe contends that many litigants dropped their suits once passions had cooled and the prospect of much time, trouble and money was faced: 'Litigation and Human Relations', p.6.

sentence greater than one-fifth of the total number of plenary causes heard (21%, 8 sentences). In the nineteenth century, numbers of sentences remained low but were read in a larger proportion of plenary causes: five of the ten plenary causes heard between 1800 and 1809 resulted in sentence; eleven out of thirty-eight (29%) between 1830 and 1839; three out of fifteen the following decade; and both of the plenary causes commenced between 1850 and 1854 ended in sentences.

The balance between some form of settlement, summary proceedings and lengthy litigation was determined to some extent by the defendant's perception of his options. Fear of costs may have prompted immediate confessions while disdain for the courts' power of enforcement may have encouraged the feeling that a citation could be ignored with impunity. Settlements arose under different circumstances: a counter-suit might be as effective as submission and the tendering of an apology. No single factor in these calculations remained unchanged in our period: excommunication was replaced by imprisonment; costs rose; and penance was transferred from the parish to the court room at Wells. A closer look at settlement, excommunication, costs and penance should allow us to penetrate some way beyond the numbers of our tables and into the minds of litigants.

Settlement, as vaguely as we have defined it for the purposes of tabulation, has left some clear traces in the records. Settlement could be reached at any time in proceedings and, as Sharpe has noted, the threat of a suit could be used to initiate the negotiations that would lead to a reconciliation. The mechanics of pre-litigation settlement are occasionally visible. On the outside of a proxy in a defamation cause brought by Grace Dunn of No. 4 Wells Place, Holloway, in Bath, the words are pencilled: 'Have you heard from Graves today - as to settling this'. George Bowditch's proctor announced that his client desired to make 'proper apology for the Offence but that the arrangement had been delayed by the absence of Hope'. (Hope was the plaintiff's proctor). At the next session, Bowditch still had not appeared and the registrar noted that the cause was 'ended'. Elizabeth Hobbs, the wife of Henry, did not appear when she was cited for defaming Elizabeth Hawkins, a spinster, who lived a few buildings away in Philip Street, St. James, Bath. The cause was ended at the next session, 'a written apology having been made and presented to the Court'. Written apologies were also elicited under the threat of litigation. John Short, a witness in two defamation suits that centered around the lodging house he lived in, was confronted with such an apology, tendered by him to Maria Ferris, one of the plaintiffs, and was asked under what circumstances he had

signed it. It read as follows:

I the undersigned John Short having asserted Statements prejudicial to the character of Mrs. Maria Ferris and she having threatened to commence proceedings against me for so doing has kindly consented on my signing this written Declaration of my Regret for having done so and paying the Costs incurred to abandon any further proceedings against me And I hereby Promise not to injure the Character of Mrs. Ferris in the future.

Short claimed that 'he was induced to sign from his knowledge of the Character of...Ferris, and to avoid the risk of further Law expenses which he could not afford to expend'. Presumably the only costs incurred were those of consulting a proctor, for the cause is not recorded in the Act books. Ferris had probably not gone so far as to request a citation.<sup>45</sup> Fear of legal costs, rather than contrition or even guilt must have precipitated many settlements in the nineteenth century.

We know very little about the negotiation of such settlements. Arbitrators are far less frequently identified than they were in the York documents Sharpe has studied, but their names appear in a few causes. In 1735, Sarah Burret, 'now wife of John', claimed that her differences with the plaintiff, Betty Cornish, were 'made up', and 'reconciled' before \_\_\_\_ Long

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<sup>45</sup>Dunn v. Wilkins, D/D/Ca 442(1839); Windsor v. Bowditch, D/D/Ca 474(1838)(A.W.); Hawkins v. Hobbs, D/D/Ca 442(1839); Wickham v. Lockyer, D/D/Ca 454, 455, 442(1836) and D/D/C (1836). The apology was signed and dated 24 September 1836.

Esq., J.P., and that they had a written agreement between them. The judge monished Burret to produce evidence of the agreement, which she did at the next session, when the cause was dismissed.<sup>46</sup> In 1797, when John Capron was accused of defaming Jane, the wife of John Williams, he denied the libel and was awaiting proof when he and Jane Williams appeared in court 'and with their consent and also by the decree of the Judge referred the settlement of this defamatory cause to the final decision of John Fownes Luttrell of Dunster Castle Esq. and Vincent Phillips of Dunster Malster'. The defendant returned at the first session of the next term, two months later, confessed and performed penance in open court. Costs were taxed at £13, a rather large sum for a cause in this period, and a monition was issued.<sup>47</sup> In the 1840s, the plaintiff 's proctor in another cause drew up a written apology for the defendant to sign 'in

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<sup>46</sup>Cornish v. Burret, D/D/Ca 466(1735)(A.W.)

<sup>47</sup>Williams v. Capron, D/D/Ca 438(1797). Whether we are seeing a feudal throwback or the intervention of civil authorities in this case we cannot say: the Luttrells were lords of the manor at Dunster, where the cause originated, and kept a paternal grip on their parochial affairs. Very few causes from their estates found their way into Wells Court, which was at a great distance; Taunton Court may have exercised jurisdiction more frequently, or perhaps the opportunities for settlement were greater in closed villages such as Dunster.

case of relenting'; he then visited her and urged her to apologise 'but she expressed her determination to resist the proceedings'.<sup>48</sup>

The court could abet the settlement process in this way by legitimating an outside arbitrator and it could also do so by ruling to accommodate an attempt at settlement even when it was not mutually agreeable to the proctors. Just before witnesses were called, Giles Little, a coal haulier, confessed to defaming Susan Bennett, a spinster. He was pronounced guilty by interlocutory decree and performed penance in court. At this point, Little's proctor alleged that 'he was anxious to settle this cause out of court', and the judge delayed the porrection of a bill of costs despite the dissension of the adverse proctor. Both proctors declared the cause ended at the next session, apparently having settled costs out of court. Settlements were easier to achieve when more than one cause between the parties was pending; this must have inspired more than a few countersuits. Jane Little, Giles's wife, took Susan Bennett to court for defaming her more than three months after Bennett commenced her suit: indeed, just a few days before

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<sup>48</sup>Board v. Hill, D/D/Ca 443(1843) and D/D/C (1843). A handwritten apology, duly signed by the defendant, is preserved among the papers of a cause for brawling in church: Hall v. Colston, D/D/C (1838).

Giles Little confessed. This cause had only reached its third hearing when it was terminated, on the same day as the other suit, by both proctors. Mary Martin and Mary Squire decided to initiate a countersuit when Anne Cole's proceedings against them showed signs of succeeding. They were convinced that they had a case based upon 'a just foundation' that 'might be a means of the suit being dropt' and they approached a proctor who told them 'if they had got good evidence for the defama[t]ion given [them] he wo[ul]d go with it if they were to employ him'.<sup>49</sup>

Settlement did not always entail reconciliation or the advent of harmonious relations. Nowhere is this clearer than in a cause between John Tucker, a blacksmith, his wife, Ann, and William Sherring Junior, a tailor. The Tuckers made the mistake of taking Sherring to court for defaming Ann after they had executed a bond for £40 for good behaviour conditional on the settlement of all differences between the parties. The judge, after studying the bond, dismissed the defendant with costs. The bond, which was filed with the other cause papers, describes feuding of the sort that found multiple legal

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<sup>49</sup>Bennett v. Little and Little v. Bennett, D/D/Ca 442(1838); Squire, Martin v. Cole, D/D/C (1743) (A.W.)

expression: a defamation suit played only a small part in the campaign of harassment that the parties carried into church and common law courts alike. The bond alluded to 'divers differences and disputes which had lately arisen between...John Tucker and William Sherring', including an assault committed by Tucker which Sherring had been persuaded not to prosecute at Quarter Sessions 'by the interposition of Friends'. Tucker was to pay Sherring one guinea plus the costs of the bond and to swear 'never more to molest or abuse...Sherring in any respect whatsoever' nor to 'abuse assault molest defame disparage or injure... Sherring either in his person or in his good name, fame, reputation or business'.<sup>50</sup> Settlements arrived at through the agency of the Wells court did not seem to go so far as to require bonds but they often arose in similar situations and tried to *accomplish the same things*.

That settlement was an integral part of court proceedings is evinced by the way it was used by litigants to win delay and obscure issues. The defendant's word could not always be taken in these matters, and judges exercised caution in accepting purported agreements. Thomas Allen and Francis Brown

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<sup>50</sup>Tucker and Tucker v. Sherring, D/D/Ca 434(1774) and D/D/C (1774).



both declared that their disagreements with the widowed Mary Tucker were settled, but her proctor denied it and the judge assigned a libel in both causes. Allen and Brown ceased to appear, were excommunicated and absolved, and eventually performed penance in their parish, Croscombe.<sup>51</sup> Richard and Jane Jefferies confessed to calling Anne Price a whore but alleged that the cause had been agreed. The judge rejected their allegations and ordered them to 'hear his pleasure' on costs and penance. It is not clear that they performed penance in the chancel of Lyncombe and Widcome church, as monished, or paid any costs, before the cause was mutually ended.<sup>52</sup> Plaintiffs, too, invoked settlement when they felt themselves to be losing a cause. Francis and Elizabeth Bevan claimed that their cause against James Higgins was 'under a treaty of peace' once the depositions had been published, and when this did not work, alleged that they had made 'more than half proof or at least half Proof' and offered to take the 'oath supulatory

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<sup>51</sup>Tucker v. Allen, Brown, D/D/Ca 415(1736). John Bryant's proctor alleged that his cause was 'under a compromise' after he failed to perform penance. The cause ended eighteen sessions later despite an objection to Bryant's certification of penance; costs were never porrected: Evans v. Bryant, D/D/Ca 434(1775).

<sup>52</sup>Price v. Jefferies, Jefferies, D/D/Ca 417, 418 (1738).

of the truth of the matter'. The judge rejected this offer at the petition of Higgins's proctor and dismissed the defendant with costs.<sup>53</sup>

Excommunication should be one of the most straightforward indicators of contumacy, or disobedience of the courts' decrees. The impact of excommunication on personal and commercial relations has been explored energetically, if speculatively, for earlier centuries: excommunication in the eighteenth and nineteenth centuries is a less familiar subject. (Though 'to keep out excommunicated persons (if any) and dogs' remained among the sexton's duties in Chew Magna in 1755).<sup>54</sup> More than ten percent of the defamation causes in our period terminated in the excommunication of a litigant; not all of these were formal excommunications that necessitated biennial publication of contumacy in one's parish church. Significavits, which could result in imprisonment,

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<sup>53</sup>Bevan v. Higgins, D/D/Ca 425,446(1756). The proctors of Charles Morgan and Margery Blanch alleged that the cause between them was 'under a reference' and under a 'treaty of peace', but Blanch eventually denied this and was dismissed with costs in the absence of a libel: Morgan v. Blanch, D/D/Ca 417,418(1738). The same happened in Carisbrook v. Wood, D/D/Ca 415(1736), an ex officio cause for reproach.

<sup>54</sup>Wood, Chew Magna, p.249.

were issued very rarely, certainly less than ten times before the law changed in 1813.<sup>55</sup> There was, of course, a great deal of contumacy that went unpunished. Large numbers of defendants stayed away from the courts entirely, and though some of their causes were undoubtedly settled amicably, others dwindled away in the face of obdurate contempt. Such conscious contumacy may have been fuelled by disrespect for the enforcing powers of the church, or by an assessment of an opponent's legal staying power. The relatively low rates of excommunication (as compared to other periods) may have been as much a product of the devaluation of the sanction as of an increase in obedience.

Excommunication was, however, enough of a burden to force twenty-two litigants (mostly

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<sup>55</sup> Many of these may never have been more than threats. According to PP 1831-2, xxiv, Report, Appendix D, pp.568-71, four people in the diocese were imprisoned under significavit between 1 January 1827 and 31 December 1829. Only one, John Drewer, was imprisoned in a defamation suit; he remained in gaol from 30 November 1828 to 20 July 1829. Sixty-nine people throughout England and Wales were imprisoned in the same period. Drewer appears nowhere in the documents of the Wells courts, and may have been litigating in a peculiar court or at Taunton. Instead, two women, both defendants in the episcopal court, are listed as being signified to Chancery in this period: Flower v. Ford, D/D/Ca 451(1826) and Paul v. Pritchard, D/D/Ca 451(1828). Presumably these are examples of threatened significations.

defendants) to seek absolution so that they might resume litigation.<sup>56</sup> Two of these twenty-two were among the six defendants who suffered excommunication twice in the course of proceedings. An additional nineteen litigants avoided absolution, its oath and fees, either by appearing at Wells before letters denunciatory had been issued or through the good offices or failure of will of adversaries who overlooked their contumacy or ceased to litigate.

Excommunication, declining as it did throughout the eighteenth century, was practically dropped as a tool of enforcement at the end of the century. Perhaps the slightness of the penalties adhering to excommunication made it too insubstantial a punishment for contempt. It was in this context that the new statute governing excommunication (53 Geo III c.127) came into effect. Unfortunately, the advent of the law, which dropped the lengthy excommunication and signification procedure as the penalty for contempt and introduced a ten-day waiting period followed by a writ de contumace capiendo and imprisonment, coincides with a gap in the records and its early

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<sup>56</sup>Price studied three samples of excommunications and suspensions from the late sixteenth century and concluded that out of 495, 22% sought absolution. Without cause totals for those years, we cannot determine what proportion of defendants were excommunicated: 'Abuses of Excommunication', p.109.

impact is lost to us. By the 1820s, when Act books resume, significavit were being issued at an increasing rate and recognised contumacy was rising to the levels of the previous century. Defendants who thought it safe to ignore a citation and plaintiffs who did not pay the costs of a dismissed suit could find themselves in gaol until they submitted to the decrees of the court. Once incarcerated, poor defendants languished without the means of liberating themselves. Ritchie has written that signification was restricted to the wealthy in the Elizabethan period, and Marchant agrees that it was used to make examples of wealthy offenders who ignored the decrees of the court.<sup>57</sup> But under the new law--which was intended to end the abuse of a spiritual sanction, excommunication, as the punishment for a non-spiritual crime, contempt--the minor aggravation of excommunication was replaced by the imprisonment of those who could not afford to litigate in the first place; the law succeeded in punishing lack of means rather than contempt. This point is well illustrated in Chapter 6, below, where the legal entanglements of Frederick Board and Mary Hill are discussed.

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<sup>57</sup>Ritchie, Ecclesiastical Courts of York, pp.190-1; Marchant, Church under the Law, p.229.

High costs, as we have seen, were another embarrassment to the parliamentary commissioners. There is no doubt that costs increased drastically in the nineteenth century and that this must have discouraged many litigants from pursuing suits or asserting their innocence in plenary proceedings.<sup>58</sup> Yet costs never reached the extraordinary levels described in the parliamentary evidence, and the cost of a rapidly concluded suit, of which there were many, remained 10s. into the nineteenth century.<sup>59</sup> Of the 128 causes drawn from Bath between 1733 and 1799, fifty-eight did not require the assignment of costs, seventeen resulted in the payment of 10s. and in a further thirty-eight, most of them summary proceedings and therefore unlikely to have cost more than 10s., costs are not recorded. The remaining fifteen causes left bills of allowed costs ranging from 13s.4d. to £8 15s. 0d. (1742) and average out at less than £3 apiece. Between 1800 and 1851, 113 causes originated in Bath, fifty-four of which probably did not require costs to be paid and thirty-five (again, many of them

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<sup>58</sup>5 Geo IV c.41 was a stamp act intended to reduce certain court costs but its effect is not noticeable.

<sup>59</sup>London defamation suits in the eighteenth century cost between £6 and £10, though this probably included the cost of witnesses: Trumbach, 'Whores and Bastards', p.4.

summary) for which costs are not recorded. The thirteen lengthy causes for which costs are recorded ranged between 30s. and £27 9s. 0d. and averaged more than £10 each. <sup>60</sup>

Somerset judges never relinquished their hold over taxation of costs. It was through taxation, or the moderation of costs determined by the victorious proctor, and through dismissal, that judges expressed their reservations as to absolute guilt or innocence, motivation, provocation and circumstances. Mary Baines was awarded only half of the more than £25 in costs after winning her suit against Joseph Lawley: the judge was probably aware of the feud between the two families that had produced a lengthy suit three years before.<sup>61</sup> Sarah Wickham was awarded full costs after proving that Charles Lockyer defamed her, but Lockyer's housekeeper, Maria Ferris,

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<sup>60</sup>Bath has been chosen for cost comparisons because the expense of calling witnesses, based on the distance from Wells and the rate of reimbursement for time lost, was internally consistent and its effects on costs can be ignored. In one cause, summary costs of 10s. are recorded; in ten others there is not enough information to determine outcome. In fact, the total costs were much higher in a few causes for which costs were recorded but judges awarded fractions, such as one-half, to the victorious party. The computations, then, are based on costs assigned rather than amounts spent on prosecution.

<sup>61</sup>Baines v. Lawley, D/D/Ca 442(1837) and Biffin v. Lawley, D/D/Ca 441(1834).

received only two-thirds of the £41 3s.9d. in costs when she prosecuted Sarah Wickham.<sup>62</sup> In what must have been the highest bill of costs for a defamation suit at Wells, Isabella Welch was to collect only half of the £60 expended in her suit against Daniel Stark. Again, the judge had heard two previous suits involving the same parties and must have decided that the guilt was not entirely on one side.<sup>63</sup>

Dismissal and the subsequent allocation of costs also had its disciplinary aspect. Causes could go against the plaintiff in three ways: by informal and unchallenged abandonment of proceedings by the plaintiff; by dismissal of the defendant by interlocutory or final decree, with or without costs; and by reading a sentence against the plaintiff. In practice, it is not always clear in which way proceedings were terminated, but the grounds for discontinuation were usually failure to submit a libel or to prove it by producing reliable witnesses, or any witnesses at all. Jane Toft, a widowed publican, lost her case against Alexander Currell, a yeoman,

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<sup>62</sup>Wickham v. Lockyer and Ferris v. Wickham, D/D/Ca 454,455,442 (1836) and D/D/C (1836).

<sup>63</sup>Welch v. Stark, D/D/Ca 477,474(1836) (A.W.) Stark's wife, Frances, had prosecuted Isabella and her husband Robert a few months previously. They had both confessed to calling her a whore, and paid £2 15s. 6d. each in costs: Stark v. Welch, Welch, D/D/Ca 477 (1836) (A.W.).



and even had a sentence read condemning her in costs, but these amounted to a mere 5s. John Johnson was dismissed after Elizabeth, the wife of Thomas Ray, failed to stipulate that she could bear the costs if she failed in prosecution--an act rarely demanded, and mostly limited to minors or those suspected of extorting money from a defendant through litigation--but Johnson was not granted costs and he was made to promise never to abuse or defame the plaintiff in the future. Judges also used dismissal to discipline proctors who disobeyed decrees. Philip Pryor was dismissed because the proctors in the cause had not exhibited proxies as directed.<sup>64</sup> Thus, judges continued to exercise discretion within the legal structures until the end of our period by promoting settlements, manipulating costs, dismissing defendants and extracting informal apologies.

The performance of penance distinguished church court proceedings from those at common law and penance

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<sup>64</sup>See Elliott v. Rebbeck, D/D/Ca 437(1791) in which the judge refused to read the sentence porrected 'not thinking the Defamation sufficiently proved'; or the eight causes involving members of the Jefferys, Offer, Challenger and Herd families which ran to fifty sessions each before the defendants were dismissed with costs by final decree: D/D/Ca 470(1770) (A.W.); Toft v. Currell, D/D/Ca 452(1829); Ray V. Johnson, D/D/Ca 426,427(1760); Rays v. Pryor, D/D/Ca 477(1823) (A.W.). Judges suspected proctors of entering into causes without proxies, or written agreements, with clients. It seems that proctors probably divided a

was assigned, in different forms, until jurisdiction over defamation was removed from the ecclesiastical courts. According to canon law, penance should have been invariably assigned after a confession when a sentence was executed; in practise, penance was assimilated into the bargaining process that preceded settlement and was no longer viewed as the automatic penalty for defamation. Thus, in a very small number of causes it is impossible to confirm that penance was assigned: these may have been instances of settlement or abandonment of proceedings after capitulation. And in a decreasing but not insignificant number of causes in the eighteenth century the performance of penance (and the payment of costs, which came afterward) was left in question. This may be no more than a statistical artifact created by registrars who did not bother to register every penance that was returned to them with its certificate of performance, or again it may represent an area in which settlement short-circuited the courts' arrangements. What is clear is that causes in which penance was definitely not performed and plaintiffs petitioned for excommunication were never very numerous and were even less numerous in the nineteenth century than in the eighteenth.

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certain amount of court business between themselves without investigating the validity of the claims of litigants, and judges did not approve of this encouragement to weak causes.

As summary procedure became more popular, penance was assigned in a large number of causes and it seems to have been performed with ever greater dedication by defendants. The simplest explanation for this phenomenon was that penance was becoming easier to perform. Penance performed in court, rather than in some part of the parish church or in the parsonage, was not new even in the 1730s.<sup>65</sup> In 1738 a judge decreed that Mary Williams otherwise Ford should ask pardon 'in the usual form in publick Court'

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<sup>65</sup>The judge had always been allowed discretion in choosing the place where penance was performed, and many circumstances could be taken into consideration. When Josias Halstone defamed Jane Adams by calling her 'a whore, a damned bitch of a whore and a drunken whore' his proctor confessed for him and arranged for penance 'to be performed on account of his ill state of health in his own house': Adams v. Halstone, D/D/Ca 478(1782)(A.W.)

The trend toward simpler, less public penance was not confined to Bath and Wells. In late sixteenth- and early seventeenth- century Nottingham penance was performed in the open street as well as before the entire congregation or in a more private setting. The minister, churchwardens, and--a legacy from the days of canonical purgation--a designated number of parishioners were necessary witnesses: Riley, 'The ecclesiastical control of parochial life in the Nottingham Archdeaconry 1590-1610', pp.212, 217. Fifty years later, Pemberton discovered the same requirements for witnesses, but a greater use of parsonages and private houses. The place and the witnesses were left to the discretion of the minister: 'Nottingham 1660-1689', Chapter II, part 6, pp.9-11. Judges exercised discretion in the courts Houlbrooke studied. At Winchester, purgation was still in use but judges preferred 'to order defendants to seek plaintiffs' pardon with varying degrees of penitential formality': Church Courts and the People, p.83.

for calling Elizabeth Green a whore. Her penance was written, perhaps as a guide, on the first page of an Act book:

I Mary Williams do confess that I have abused and defamed the good character and reputation of Elizabeth Green wife of Thomas Green of the City of Bath by calling her a whore and that I am heartily sorry for the same and do ask her pardon and promise never to offend in the like again.<sup>66</sup>

Yet whatever the popularity of this form of penance in the early eighteenth century, it did not become firmly established until the 1760s. Between 1733 and 1739 at least nine penances (12%) were performed in open court but in the 1740s such apologies were allowed only twice (6%), once when 'the Judge out of indulgence dispensed with the sd Defts confession in open court, which she accordingly made'.<sup>67</sup> This was at a time when a defendant might be required to perform penance before an entire congregation, and when most penances, though less severe, took place in the parish of the plaintiff or the defendant. Beginning in the 1760s, however, open court penance began to take hold,

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<sup>66</sup>Green v. Williams otherwise Ford, D/D/Ca 417(1738). The words, which are the same as those in penance schedules read out in churches and parsonages, are in D/D/Ca 416.

<sup>67</sup>Again, we do not know whether open court penance was more popular in the early eighteenth century. Cooper v. Ford, D/D/Ca 386A(1748) (A.W.).

and by the beginning of the next century, parish penance had virtually disappeared.<sup>68</sup>

Table IVD: Penances Performed at Wells Court<sup>69</sup>

Decade	Penances	
1733 - 1739	9	12%
1740 - 1749	2	6%
1750 - 1759	4	6%
1760 - 1769	17	19%
1770 - 1779	41	45%
1780 - 1789	35	51%
1790 - 1799	25	71%
1800 - 1809	40	95%
1810 - 1819 (incomplete)	9?	100%?
1820 - 1829 "	37?	95%?
1830 - 1839	53	100%
1840 - 1849	13	100%

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<sup>68</sup>The increased popularity of open court penance reversed a pattern that had been developing in the middle of the century. At this time, defendants did not appear in court but empowered their proctors to confess for them. Defendants could stay away only so long as penance was assigned in the parish, and as open court penance became common, more defendants must have decided to travel to Wells.

<sup>69</sup>Parish penance was not necessarily required in the remaining nineteenth-century causes; often it appears that penance was not assigned at all. Parish penance could be circumvented, as when John Kinks claimed that the Post Office never sent the

Indeed, it looks as if Somerset judges and proctors, like the witnesses before the parliamentary commission, were coming to regard public penance as an avoidable aspect of a distasteful form of litigation. Twice in the nineteenth century it was requested that penance be performed in the vestry, and both times the judge acceded to the petition of the defendant's proctor and permitted penance in open court.<sup>70</sup> Parish penance was assigned one last time in 1850. Charles Love performed his penance in the parish church of Farmborough for defaming Mary, the wife of

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letter containing his penance. The judge, 'under the circumstances', allowed him to perform penance in court: *Parson v. Kinks*, D/D/Ca 473(1802) (A.W.) Francis Gowen had his contempt signified to Chancery for failing to perform penance in the vestry of St. Michael's church, Bath. Later, when he appeared in court and stated that he had 'incautiously incurred the penalty of contempt', he was enjoined an open court penance which he duly performed. He was again signified for neglecting to pay over £15 in costs, and may have been imprisoned again. The plaintiff, Eliza Jane Nowell, had been defamed through her husband; she was his second wife and the Nowells may have set more store by public penance (the only one assigned in the 1830s) than by the payment of costs: *Nowell v. Gowen*, D/D/Ca 441,454,455(1835).

<sup>70</sup>*Collett v. Tarring*, D/D/Ca 451(1822) and *Jones v. Wells*, D/D/Ca 452(1831). Both causes originated in Bath, a city which judges may have thought unreceptive to such archaic practices. On the other hand, *Nowell v. Gowen* (n.69) was a Bath cause. A judge honoured a similar request at least once in the previous century, but this may have been because the parish, Porlock, was at such a great distance from Wells: *Clatworthy v. Browne*, D/D/Ca 433(1773).

George Welshman.<sup>71</sup> One would like to probe the silence of the records to discover what prompted this revival of the old form of penance.<sup>72</sup>

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<sup>71</sup>Welshman v. Love, D/D/Ca 444(1850). This would seem to contravene 7 Wm&1 Vic c.45: 'That...no Decree...Citation, or Proceeding whatsoever in any Ecclesiastical Court, shall be read or published in any Church or Chapel during or immediately after Divine Service'.

<sup>72</sup>The resurrection of public penance around this time was not limited to Somerset. Several correspondents noted an example of a full public penance, including a white sheet, performed at Fen Ditton around 1848. That this was an unusual event, rather than the last example of a long tradition there, is suggested by the use of the sheet and the fact that the church was stormed by the residents of a neighbouring parish. The reason for the revival may have lain in the victim's identity (she was the rector's wife): N&O for S&D, 4(1895):168,231.

## CHAPTER 5

## LITIGANTS, WITNESSES AND WORDS

I. Gender, Language and the Double Standard

Defamation, in our period, was a crime committed almost exclusively against women. Both the growing proportion of female plaintiffs and the shrinking vocabulary of insult recorded in libels and depositions reflect the gradual adoption of the double standard by the plebeian men and women of Somerset. The church courts and their personnel played a role in enforcing the double standard, especially in the second half of the eighteenth century, when judges actively discouraged male plaintiffs. Yet if court personnel successfully abetted the process that resulted in the acceptance of the double standard, their attempted transmission of related ideals of respectability that were at odds with traditional plebeian culture was never entirely successful. Plebeian litigants (and particularly married women, whose freedom to litigate in the church courts was not mediated by the usual legal constraints) registered their resistance by continuing to use the courts to settle their indecorous disputes in the old, embarrassingly public ways.

In this section, we will examine the gender of



litigants and the words they used to insult each other. Just as the encroachment of the double standard can be detected in the decline and disappearance of male plaintiffs and the growing concern with the reputations of married women, it also leaves its mark in the progressive reduction of the recorded vocabulary of insult to the word 'whore'. Defamatory language, rich and allusive, was used by defamers to disrupt and injure, but it also served an admonitory function, publicly distinguishing good behaviour from bad. Rather than providing a literal and quantitative catalogue of illicit sexuality, these sexual insults, where their metaphors can be penetrated and their allusions deciphered, record popular views of the relationship between various forms of sexual behaviour and the maintenance of a good reputation. Where they cannot, they point suggestively to the changing boundaries of tolerance.

In 94% (1253) of the causes for which gender data survive, women are the victims of defamation (see Table VA).<sup>1</sup> Men appear as plaintiffs in only 5% (61) of the causes, and in two-thirds of them their adversaries are men. As for the defamers, 59% (783) of them were men. Men defamed women in 56% (742) of all causes, and attacked

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<sup>1</sup>The woman alone was plaintiff in 81% of the causes and prosecuted jointly with a spouse in a further 13%. In only 12 causes (less than 1%) is it impossible to determine the gender of litigants.

TABLE VA  
DEFAMATION BY GENDER AND MARITAL STATUS

Decade	Person Defamed	Defamed by:				
		Wife	Spinster	Widow	Female*	Male
1733-	Wife	33	0	0	9	59
1739	Spinster	1	0	0	0	7
	Widow	5	1	0	0	5
	Female*	13	1	0	11	27
	Male	5	1	1	16	0
1740-	Wife	9	4	0	8	43
1749	Spinster	4	1	0	2	8
	Widow	4	0	0	0	9
	Female*	2	0	0	2	10
	Male	2	0	0	0	9
1750-	Wife	25	4	1	5	48
1759	Spinster	11	0	0	1	18
	Widow	5	0	0	0	9
	Female*	3	0	0	1	8
	Male	3	0	0	0	7
1760-	Wife	18	2	1	3	51
1769	Spinster	10	1	0	2	15
	Widow	1	1	0	0	6
	Female*	1	0	0	4	10
	Male	1	1	0	0	6
1770-	Wife	24	8	5	3	45
1779	Spinster	9	3	0	1	22
	Widow	1	0	0	0	7
	Female*	1	0	1	1	3
	Male	1	2	0	0	2
1780-	Wife	19	6	4	2	31
1789	Spinster	11	7	1	0	11
	Widow	2	0	0	0	4
	Female*	0	0	1	0	2
	Male	1	0	0	0	1
1790-	Wife	6	3	1	0	32
1799	Spinster	6	1	0	1	7
	Widow	1	0	0	0	3
	Female*	0	0	0	0	1
	Male	0	0	0	0	0

TABLE VA (Continued)

Decade	Person Defamed	Wife	Spinster	Defamed by: Widow	Female*	Male
1800-	Wife	15	1	0	1	27
1809	Spinster	11	0	1	0	11
	Widow	0	0	0	0	0
	Female*	1	0	0	0	2
	Male	0	0	0	0	0
1822-	Wife	17	4	3	1	24
1829	Spinster	7	1	1	0	9
	Widow	1	0	0	0	5
	Female*	1	0	0	0	2
	Male	0	0	0	0	0
1830-	Wife	22	3	2	3	64
1839	Spinster	15	4	0	0	16
	Widow	6	0	0	0	6
	Female*	1	0	0	0	2
	Male	0	0	0	0	0
1840-	Wife	13	0	3	0	23
1849	Spinster	3	0	1	0	8
	Widow	1	1	0	0	1
	Female*	0	0	0	0	0
	Male	0	0	0	0	0
Total		352	61	27	77	726

\*Marital status not recorded.

All husband and wife plaintiffs and defendants have been tallied as wives.

their fellow men forty-one times, or in 3% of the causes. Women restricted their defamatory activities almost entirely to other women, defaming men in only 2% (19) of the total causes.

It was not, however, women as an undifferentiated mass who crowded into the church courts. The women who participated in defamation suits, either as plaintiffs or as defendants, were predominantly wives. In 14% (180) of the causes wives cast aspersions on the characters of other wives; in 11% (141) they defamed other women and twelve wives defamed men. Thirty-three wives (3%) were prosecuted by married couples, which generally meant that the woman sustained the injury and the husband joined in her suit as a matter of legal form. Wives, then, were the aggressors in 28% of the causes, about half as many as men, whose marital status was only incidentally recorded. Wives were also the women who prosecuted most frequently. Once again, 180 wives were defamed by other wives, and a further eighty-two (6%) were defamed by spinsters, widows or women of indeterminate status. Of the 620 women insulted by men, 355 were wives. Only two women prosecuted married couples. Thus, if one includes the 174 wives who prosecuted jointly with their husbands, wives were the victims of defamation in 60% of the total number of causes.<sup>2</sup> As Table VA

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<sup>2</sup>The presence of large numbers of female plaintiffs, particularly married ones, has been repeatedly

illustrates, the number of married female plaintiffs, as a percentage of all women defamed, begins to rise unevenly in the 1770s and reaches a peak of 72% in the final decade. This final figure in no way represents the proportion of married women in Somerset in 1851. According to the census of that year, only 56% of the county's adult female population was married, 31% had not yet married and 14% were already widowed.

Among unmarried women, spinsters were more litigious than widows. Twenty percent (268) of all plaintiffs were spinsters and 7% (87) were widows. Even

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commented on in the literature, though it does not seem to have reached the levels recorded at Wells. Married people, especially 'middle-aged women', were the commonest litigants at Norwich and Winchester during the Reformation: Houlbrooke, Church Courts and the People, p. 80. In a sample of 100 causes brought in the Durham courts in the early seventeenth century, seventy-nine were brought by women and sixty-one involved women defaming each other: Rushton, 'Women, Witchcraft and Slander', p. 131. A York sample of 103 causes from the 1690s includes fifty-six female plaintiffs, forty-four of whom were wives: Sharpe, Defamation and Sexual Slander, p. 27. A Wiltshire sample covering the years 1615 to 1629 included fifty-five male plaintiffs (accused of a range of crimes, sexual and non-sexual) and eighty-seven female plaintiffs (thirty-six of whom were called whores), at least forty-eight of whom were married: Ingram, 'Ecclesiastical Justice in Wiltshire', p. 275. Married women accounted for 63%, 60% and 80% of the plaintiffs respectively in three samples of eighteenth-century London defamation causes taken from 1700-9, 1750-9 and 1790-9: Trumbach, 'Whores and Bastards', p. 5. (Smollett, however, still has his male characters threatening each other with defamation suits in his London of the 1740s: Roderick Random, p. 317). See also the evidence of the deputy registrar of Chester, who noted that the plaintiff was 'generally a female' and that of the registrar of Norwich: PP 1831-2, xxiv, Report, pp. 177; 216. Somerset women married somewhat less than women in the nation as a whole: Census of 1851.

fewer unmarried women were defendants: sixty-five spinsters (5%) and thirty-two widows (2%). Women whose marital status cannot be determined accounted for 8% (105) of the plaintiffs and 5% (63) of the defendants. It would be convenient to assume that these women were unmarried, given the court's predilection for keeping track of husbands, but incomplete or hastily transcribed records could as easily contribute to the absence of wives.

Men, whose role in defamation proceedings had become increasingly restricted to that of defendant even before our period, ceased prosecuting altogether in the late eighteenth century. The last case against a female defendant in the Act books is dated 1779. Two years later, in 1781, the archidiaconal court of Wells entertained its last defamation suit between two men; the episcopal court had abandoned causes between men in 1778. In fact, it appears that the courts' desire to eliminate these causes predated the popular redefinition of male reputation that eventually led to the complete rejection of male defamation. A judge announced in the bishop's court in 1757 that for Robert Merrick to call Matthew Dawbin a 'son of a whore' did not constitute defamation of him but rather of his mother, but nineteen more defamation suits brought by men were heard in the years between 1757 and 1781, and

women were defendants in only eight of these.<sup>3</sup> The conflict between men who still looked to the church courts to restore their honour and court personnel who had ceased to recognise the efficacy of their legal remedies in these cases took almost a quarter of a century to resolve.

The allocation of gender between defamers and their victims cannot be conveniently considered without referring to the language of defamation. Defamatory language did not always fit easily into the narrow legal definitions, and the popular understanding of what was defamatory certainly diverged from legal theory at many points. The most obvious way to defame a woman was to call her a whore, and it is variations on this theme--some strictly actionable and some not--that account for the bulk of the causes for which words have been recorded. When it came to defaming

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<sup>3</sup>Dawbin v. Merrick, D/D/Ca (1757). Of course, the judge was right. However, the court had been more accommodating about such cases in the past and Robert Usher prosecuted Hannah Millard for calling him 'bastard and son of a whore' the following year: D/D/Ca 450, 426 (1758). Words survive in thirteen of the forty-one causes between men. 'Son of a whore' by itself accounted for seven causes; the term was combined with others in four more causes. All of these, of course, were prosecuted by men rather than their mothers. In the nineteen causes where women defamed men, the words were 'son of a whore' in three and were joined with 'bastard' in a fourth. (Words survive in only eight of these causes). Causes between male litigants were peculiar in many respects: only one originated in Bath; 27% joined parties from different parishes; penance was assigned in less than a third and informal apologies were often substituted. Many of these causes were ex officio and conformed minimally to church courts standards and practise.

men, the case was more complicated. An Axbridge ordinance dating from the sixteenth century proscribed the words "knave, thyffe, harlett or lober" as defamatory, but the sexual connotations of a word such as 'knave' are difficult to establish out of context.<sup>4</sup> A brief look at early eighteenth-century penances reveals that terms such as 'rogue' and charges of keeping or lying with whores were recognised as sexually defamatory by defendants and by the courts. Yet in our period the lexicon of male defamation shrinks drastically: on the rare occasions when men appear as plaintiffs, they are usually complaining that they have been called a 'son of a whore'. A few mothers did prosecute independently when their sons were called sons of whores or bastards. 'Cuckolds' conformed to the law and invariably sent their wives into court to clear their reputations.<sup>5</sup> When a man was accused of lying with a specific woman other than his wife, it was more frequently the women who pursued the culprit into the church courts.<sup>6</sup>

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<sup>4</sup>Knight, Heart of Mendip, p. 411.

<sup>5</sup>There are five causes in which cuckoldry was the main direct insult, and in each the married couple appeared as plaintiffs: Board and Board v. Neale, D/D/Ca 425 (1755); Charmbury and Charmbury v. Brooks, D/D/Ca 426 (1759); Gow and Gow v. Elmes, Wellan and Witherell, D/D/Ca 434 (1774). In only one cause was the defendant, Elizabeth Wellan, a woman.

<sup>6</sup>When Mary Loader told William Clavey 'to go home to his whore Sarah Bendall', it was Bendall who prosecuted: Bendall v. Loader, D/D/Ca 478 (1783) (A.W.). Loader also prosecuted Clavey for saying she was a 'whore and that he



Words have been recorded in about half of the 1327 causes that have been subjected to analysis. Of these, half again consist of the single epithet 'whore'. Defamation could be lengthy and lyrical, but strict adherence to the law reduced many colourful speeches to this single word, and it was by far the most common term of abuse in our period. Fortunately, in more than 300 causes citations, libels, depositions and Act book notations preserve the more elaborate words that plaintiffs charged their adversaries with uttering.<sup>7</sup>

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made a whore of her': Loader v. Clavey, D/D/Ca 478 (1783) (AW); which makes it look as if the words were exchanged in argument. Originally, John Toogood and Elizabeth Blanning cited George White and John Perry for accusing them of committing adultery, incontinence or fornication together, but it was Blanning who prosecuted the two men: Blanning v. White, Perry, D/D/C (1820). Only one man appears to have brought suit in this situation. When Charity Eades accused Ann Browne of being John Russell's whore, Russell and Browne commenced separate suits: Russell v. Eades, Browne v. Eades, D/D/Ca 450 (1758). Russell, Browne and Elizabeth Browne were charged with assaulting Charity Eades on 1 June: Q/SI 378 (Bridgewater, 1758). As the citations were issued on 17 June, the proceedings may have arisen from the same incident.

<sup>7</sup>This group includes many causes in which the libel charged the defendant with calling the plaintiff a whore, or some simple form of words, while the remaining cause papers reveal lengthier and more complicated insults. Because of the formal preference for the single word 'whore'--it was clearly actionable and easier to prove than a more personal form of words--libels are not a reliable guide to the variety of insult or the richness of language in our period. It makes little difference for the purpose of this study, whether or not the words were actually spoken as reported or spoken at all. That plaintiffs founded suits upon them is enough to substantiate their currency.

In Table VB, I have attempted to sort the insults against women into categories that reveal some of the concerns expressed in defamatory language. Where fuller forms survive, or where witnesses provide differing accounts of the words, one can do no more than try to identify the main thrust of an insult and to keep in mind that there was considerable overlap between the categories. The omnibus category at the bottom represents not so much mixed defamatory sentiments as combinations of adjectives with 'whore'--which figured in virtually every defamation of a woman--and other nouns such as 'bitch', 'bawd' or 'strumpet'.<sup>8</sup> Favoured adjectives were 'bitch' (as in 'bitch of a whore') 'common', 'old' and 'nasty', but adjectives redolent of religious disapproval ('Damn'd', 'brimstone', 'damnation', 'damnable', 'damned eternal'), those alluding to physical deformity or degeneration ('crumbacked', 'piss a bed', 'overriden', 'carron'[?]), and words descriptive of character failings and criminal activities ('blackguard', 'false forswearing', 'murderous') were not uncommon. Other included 'fornicating', 'abandoned' and 'Ginger'. The last may have referred to

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<sup>8</sup>'Strumpet' begins appearing in libels in the 1820s and was recognised as actionable, whereas bitch had to be used in conjunction with whore or some other clearly defamatory word. The distinction between bawds and bawdry has been noted, but 'bawd' was rarely used on its own and therefore the distinction made little difference in practise.

TABLE VB  
DEFAMATORY LANGUAGE USED AGAINST FEMALE PLAINTIFFS  
1733-1854

	Male defendant	Female defendant
Whore	201	133
Common whore, etc.	12	7
Drunken whore, etc.	3	2
_____ 's whore	57	49
Adultery, lewdness	10	8
Has bastard(s)	19	7
Prenuptial pregnancy	1	2
Prostitution	11	4
Geography (with whore)	4	5
Venereal disease	5	5
Incest	3	0
Infanticide	0	1
Bestiality	1	0
Mixed	38	38
	<u>365</u>	<u>261</u>

Note: These libels are drawn from all courts. The small number of causes involving husbands and wives as defendants have been included in the second column. The five causes brought by husbands and wives for 'cuckold' have been excluded. The 'Adultery, lewdness' category includes two causes brought against men for charging women with committing the crimes of adultery, incontinence or fornication and one cause brought against a man for charging a woman with the crime of lewdness as well as more obvious adultery libels.

the colour of the woman's hair, her character, or her sexual style. Also in this group are libels in which the defendant reflexively offered to prove his or her accusation.<sup>9</sup>

There were several refinements to the act of calling a woman a whore, and these often involved identifying the partner in infamy in some way. The practise of naming a man (or several men) may have been more widespread than the libels suggest. The affixing of a name to a defamatory accusation was, according to the popular view, what made the offence actionable at law. When Thomas Dorney told Mary Webb that he would 'put her into Wells Court' for calling his daughter a whore, it was suggested that Mrs. Webb replied 'that she did not say whose whore she was', thus releasing herself from the threat of prosecution. Eliza Webb denied that her stepmother had used 'any words of that kind', but Mary Webb was extremely careful to avoid the use of her stepson's

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<sup>9</sup>There was, in theory, a single justification for defamation and that was that the crime (such as bastard-bearing) had been proven in a temporal court. If a judge refused evidence of this justification, a defendant could seek a Prohibition: Burn, Ecclesiastical Law, 1:483. Truth, in general, was no justification in the church courts for words spoken with malice. It was the defamer's responsibility to bring a guilty party to the attention of the churchwardens or the spiritual court. In some of the causes at Wells it does look as if proctors ignored this dictum and introduced evidence of the plaintiff's guilt, but technically this may have been done to invalidate the testimony of witnesses. See, for instance, *Biffen v. Lawley*, discussed in Chapter Eight.

name when she accused Susan Dorney of giving him venereal disease. Susan Dorney, in turn, feigned ignorance of the implications of Mary Webb's circumlocutions, in an attempt, perhaps, to force her to name her stepson. James Morse attempted to avoid a direct answer to Ann Morse's question by nodding at a portrait that hung on the wall and saying "Damn your Eyes there--that's whose Whore you are". The victims of defamation often provoked defamers into more explicit insults with the intention of guaranteeing the success of their suits. Elizabeth Hinton, who already had been called a 'damnation whore' and made the subject of an unfavourable comparison with the wife of James Pearce, her defamer, urged him to abandon indirection, which he did, naming Daniels as the man who 'puffed' her in and out and up. Salome Calloway, the wife of a labourer, charged Henry Birth, a shopkeeper, with assaulting her with intent to rape on the road in Old Cleeve where they lived. After threatening Salome and offering her money, Birth said, "damn you you bitch of a whore What won't ye?" she said "Why don't you tell whose whore I am" and after some hesitation he answered, "Why damn thee, Copp's Whore" She replied "Birth thee shalt hear of this another day". When Birth released her, she made her way to a house nearby to report the incident and 'Joan White asked whether he told her whose Whore she was, and [she] said he did but she did

not tell...Joan White whose Whore he had said she was'.<sup>10</sup>

In the heat of argument, then, a number of men must have been implicated, if not haphazardly, then without any distinct knowledge of their wrong-doing on the part of the defamer. If we were able to trace the Danielses of these contentions we might discover more about the workings of the imaginations of defamers than about the sexual practises of people in the past. The spontaneous choice of a particular man or a series of men as sexual partners for a woman may have been dictated by logical factors, such as proximity, or known association between the parties through business or kinship ties; or it may have carried its own load of insult. The choice of the village lunatic, a man of notorious reputation, or a partner grotesquely mismatched might convey to auditors the enormity of a woman's transgression without forcing them to seriously evaluate a specific offence. The courts, of course, required no more than that the word 'whore' be uttered, and proctors must have frequently repudiated the efforts of

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<sup>10</sup>Dorney v. Webb, D/D/Ca 452, 441 ,454 (1832) and D/D/C (1832); Morse (Ann) v. Morse (James) and Morse (Ann) v. Morse (Charles the younger), D/D/Ca 451 (1827) and D/D/C (1827); Hinton v. Pearce, D/D/Ca 451 (1831) and D/D/C (1831); Q/SR 388 (Easter, 1813): Information of Salome Callaway. Joan white was also examined and remembered that Callaway told her 'that he called her nasty whore, and that she asked whose Whore, and she said Copp's whore'. Due to the gap in the Act books, we cannot tell if Callaway brought a defamation suit.

their clients by reducing a carefully elicited insult to the single word.

Of particular interest is that of the fifty-seven men who accused women of being someone's whore, nineteen claimed that the woman had been their own whore. Only one of these, John Starr, who included his son in his accusation, suggested that the woman was having sexual relations with anybody other than her defamer and possibly her husband. These men would not go so far as to implicate themselves in a lack of exclusivity. William Young was accused of saying that Mary Feare was 'a whore and that I had lain with her a Hundred and a Hundred times'. Though one hundred was a popular number for quantifying sexual relations, other men were more specific in their allegations. William Naish said of Sage Underwood that he 'had layn with her as often as he has toes and fingers', and Samuel Edwards was even more modest: he had lain with Elizabeth Maggs 'and had to do with her three times'. Other described their activities in ways that illuminate other aspects of sexual life. James Redman said of Christian Watts, the wife of Samuel, 'that he cou'd lay with her when he thought Proper'. Two men used marriage as the standard for sexual activity. John Stick otherwise Stichton claimed that Elizabeth Mogg 'had been as common to him as his wife had been': and William Houlbrook called Martha Clarke a common whore and said 'he had lain with her

oftener than her husband'. Only one man, William Clavey, boasted that he had 'made a whore' of a woman, a bold assertion in era when he might have been prosecuted ex officio for his sexual activity.<sup>11</sup> Indeed, all of these men defied the ecclesiastical courts when they directly implicated themselves in illicit sexual activity.<sup>12</sup> It is here that we glimpse the redefinition of male sexual reputation, the slow transition from Christian morality and its single standard for sexual behaviour to a circumstantial and fractured morality which enabled men to take

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<sup>11</sup>Gratewood v. Starr, D/D/Ca (1744); Feare v. Young, D/D/Ca 471 (1772) (A.W.); Underwood v. Naish, D/D/Ca 427 (1761); Maggs v. Edwards, D/D/Ca 472 (1796) (A.W.); Watts and Watts v. Redman, D/D/Ca 471 (1770) (A.W.); Mogg v. Stick, D/D/Ca 435 (1777); Clarke and Clarke v. Holbrook, D/D/Ca 423 (1747); Loader v. Clavey, D/D/Ca 478 (1783) (A.W.). The eighteenth-century defloration mania described by Keith Thomas does not find its way into libels. Perhaps it was confined to the upper classes, where attitudes towards virginity differed: 'The Double Standard', Journal of the History of Ideas 20 (1959): 196.

<sup>12</sup>Houlbrooke notes that 'It was partly in order to clear their names and thereby avoid prosecution, that people initiated suits against those who had defamed them of sexual immorality'. This must have been decreasingly the case in our period, because prosecutions for sexual immorality dwindled away entirely by 1828. In fact, in the last such cause brought before a Wells Court, Ann Harris otherwise Morse was charged with adultery, incontinence or fornication before the two defamation suits she had brought against her prosecutors were settled. This goes rather more toward denying the causal connection between the two forms of prosecution than seems to have existed in earlier centuries: Houlbrooke, Church Courts and the People, p. 56; Morse v. Harris otherwise Morse, D/D/Ca 477 (1828) (A.W.); Morse (Ann) v. Morse (James) and Morse (Charles the younger), D/D/Ca 451 (1827).



pride in their sexual transgressions while chastising women for theirs.

While men could use marriage as a benchmark for sexual activity, women spoke of its disruption by other women. Seven women took their adversaries to court for suggesting that they had stolen their husbands; five of these women were accused of being whores to a number of men besides the husband. All but one of the plaintiffs was a married woman; the sixth was a widow. Sarah Brookman accused Joan Spencer of saying that she was 'a whore and Samuel Weares whore and did drag her downstairs by the hair of the head with an intent to kill her that thou mightst have her husband'. Sarah Bassett's complaint, for which she was taken to court, was more poignant. She confessed to saying that Eleanor Difford was 'a bitch of a whore and saying that her the Defts husband had given his client a Guinea to buy her a black gown and that she the Deft and her children must abide at home in Rags while he cloathed his whore'.<sup>13</sup> Despite the ubiquity of desertion, women could not make these accusations without risking going to law, a costly prospect for a woman without a husband. There is, however, some evidence that neighbours were sympathetic to deserted spouses, whether male or female,

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<sup>13</sup>Brookman v. Spencer, D/D/Ca 449 (1758); Difford v. Bassett, D/D/Ca 437 (1788).

and the paucity of examples of this sort of defamation may suggest less the harshness of the law than the unfounded nature of these particular complaints.<sup>14</sup> Three of these seven causes ended without a confession or sentence, and four resulted in the performance of penance. In one cause, the widowed Jane Buckland was charged by Jane Symes and John Soper with being 'a barren bitch of a whore, William Symes's whore and the Miller's whore', and though Soper performed penance, Symes never appeared in court and must have had the support of at least Soper in her allegations.<sup>15</sup> Then again, a simple 'whore' directed at the proper woman may have carried adulterous associations hidden from us today.

Closely allied to this category were causes fought over explicit charges of adultery levelled by men or women not obviously related to the adulteress or her partner. These accusations appear far more frequently in the nineteenth century, and several of them are discussed in the following chapters. While some married women were accused of promiscuity, others were pilloried for recreating the marriage relationship with another man. Thomas Webb said of Jane Cook that she 'went to London with another Man as his wife'. Single acts of infidelity were

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<sup>14</sup>See Longman v. Holway, Hockey, D/D/C (1786), where a deserted husband receives the sympathy of neighbours.

<sup>15</sup>Buckland v. Symes, Soper, D/D/Ca 434 (1774).

also recorded: Elizabeth Surbut was 'a damnation whore and...had lain out all night with a married man of Taunton'. Men occasionally prosecuted when they were charged with adultery. At least one parson rounded on his accuser; and Bernard Hore, an attorney who may have wanted to clear his name for professional reasons, took James Higgins to court for saying that he was a 'whoremaster and that he had committed the crime of adultery with Elizabeth wife of Francis Bevan'. George MacCambridge hauled Hannah and John Cook into the archidiaconal court of Wells for saying he had 'committed Adultery with Mrs. Knight wife of Mr. Knight of Charlton Musgrove'.<sup>16</sup>

Bastardy, if one is to use defamation as a guide, was largely a by-product of the unmarried state. Twelve spinsters, five widows, one singlewoman and three women of indeterminate status account for all but four of the plaintiffs in these causes. (One of the four married women appeared twice). Their accusers were most frequently men, though five wives, a spinster and a woman whose marital status is not recorded are among the defendants.<sup>17</sup>

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<sup>16</sup>Cook v. Webb, D/D/Ca 451 (1826); Surbut v. Bendle, D/D/Ca 434 (1776); Wickham v. Isaac, D/D/Ca 428 (1763); Hore v. Higgins, D/D/Ca 425, 446, 447 (1756); MacCambridge v. Cook, Cook, D/D/Ca 469 (1763) (A.W.).

<sup>17</sup>Accusing a singlewoman of bearing a bastard was not actionable at common law unless some special damage occurred or the slander suggested that the child was likely to become chargeable to the parish: Burn, Ecclesiastical Law, 6th ed. (1797), 2:132. If these haphazardly preserved

Spinsters were generally charged with having a bastard, being brought to bed of a child, or being pregnant. Mary Lea was said to have gone out of town to 'lye in with a bastard', Mary Collins, who married during her suit, had been 'brought to bed of a fine son', and Hannah Burrow prosecuted Elizabeth Sheppard, who later married John Fry, for saying she was 'breeding' by him. When fathers were identified they were usually masters or fellow servants: Winifred Jones was 'her Master's whore, and had had two bastards'; Mary Blacker 'was with Child by the Bams Man'; Hester Wilmot 'had had a Child by her Master'. The only man who we know was charged with fathering bastards, Ralph White, was a landowner and it is likely that when William Smith referred to White having three bastards, he was alluding to his children. Only three women were accused of having more than one illegitimate child: a wife, a widow and an unmarried woman. Three widows, a wife, and another woman prosecuted when their sons were called sons of whores; James and Elizabeth Withers initiated a suit against James Andrews for saying 'all her children was bastards'. The remaining two women who used marriage

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defamatory words are any guide to the sexual imagination of men and women in the past, it is interesting to note that men were far more likely to include bastardy or prostitution in their libels than women were. This could be a reflection of male roles in the marketplace and in local government; at least one of the men charged with alleging that a spinster was pregnant was an Overseer sent to discover the cause of her illness.

as a cover for their illicit sexual activities were accused of committing adultery with particular men, as when Margaret Pinney was charged by William Gregory and Amos Hallet with being 'a whore and Raymond Payne's whore and...had had a child by him'.<sup>18</sup> It is perhaps surprising that so few accusations of bastard-bearing by married women found their way into the courts when the sexuality of married women so clearly occupied the attention of defamers.

Prenuptial pregnancy was easier to detect than the illegitimate births of a married woman (and remained an offence until 1787) but it also rarely formed the basis for defamation in our period. John Prenter told Ann Symons that 'she was her first husband's whore for she was with child by him before she was married,' and Jane Bear accused Hester Tuttell of having been 'a whore to her husband'. As late as 1830 Susannah Hill defamed Elizabeth More Emery by saying 'thee stop thy mouth thou Little Strumpet, for thou dost know thou was't with Child before was't married', and allegations of prenuptial pregnancy make up part of some of

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<sup>18</sup>Lea v. Plaister, D/D/Ca 426, 427 (1760); Collins v. Bateman, D/D/Ca 449, 450 (1758); Burrow v. Sheppard, D/D/Ca 397 (1786); Jones v. Goodwin, D/D/Ca 430 (1766); Blacker v. Anstice, D/D/Ca 433 (1772); Wilmot v. Waters, D/D/Ca 434 (1776); White v. Smith, D/D/C (1742) (A.W.); Withers and Withers v. Andrews, D/D/Ca 429 (1764); Pinney v. Gregory, Hallet, D/D/Ca 471 (1775) (A.W.). Another married woman was accused of having an incestuous bastard: Vowles v. White, D/D/Ca 452 (1832).

the more complicated libels.<sup>19</sup> Prenuptial pregnancy and bastardy were, as we know, not uncommon in eighteenth-century England, yet defamatory language is in no way a quantitative guide to the incidence of these events.

Sex for money or for other mercenary ends was another variation on female whoredom. While it is often difficult to distinguish between actual prostitution and the wageless promiscuity which was in most defamers' minds, there are a number of cases where specific charges leave no doubt about the activities being described. Some women were simply affixed with labels such as 'common prostitute', 'common streetwalker', and 'whore in a public manner'. At least one woman was accused of using marriage to disguise her activities: 'before she was married she was kept as a Prostitute and now that she is married she sends for Married Men to have connection with her in the absence of her husband'. Thomas Anney claimed that 'he had seen Sarah Phillips knocked under a Gooseberry Bush in Robert Westcott's garden for 6d.'. Peter and Grace Phillips commenced proceedings against Elizabeth Bond for saying Mrs. Phillips was 'Nicholas Everatt's whore and

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<sup>19</sup>The sixty-four penances that survive for the period 1726-1734 suggest that prenuptial pregnancy was a more commonly recorded accusation at that time. Quaife, Wanton Wenches, p. 58, notes that the regulation of prenuptial pregnancy was a major concern of the Somerset church courts in his period. Cases: Symons v. Prenter, D/D/Ca 425 (1755); Tuttell v. Bear, D/D/Ca 437 (1793); Emery v. Hill, D/D/Ca 452 (1830).

she ran 9s in debt to Nicholas's father and that Nicholas on account of Grace's yielding to his lewd embraces paid the debt for her and that on such like accounts he had lain with her as often as he had toes and fingers'.<sup>20</sup> Others were described as kept women; occasionally their price was named and their lack of exclusivity taken to its extreme by adding bestiality to their catalogue of sins.<sup>21</sup>

Prostitution had its own topography and it was reflected in the use of place-names in defamation. Aside from a single 'West Country whore', all of the geographical names involved are of large cities or market towns. Nicholas Loney's wife was 'as great a Bawd as any in London'; Hannah Williams and Betty Jeanes were Bristol whores; Lea Veal was a 'Keynsham whore', (a suburb of Bristol and a market town); and Emily Caroline Allen 'was as great a whore as any in Silver Street', a street in the

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<sup>20</sup>Cantle v. Brown, D/D/Ca 441 (1834); Phillipps v. Anney, D/D/Ca 397 (1784); Phillipps and Phillipps v. Bond, D/D/Ca 450, 426 (1758).

<sup>21</sup>For instance, Andrews v. Pobjay, D/D/Ca 436, 397 (1782). When John Bryant was charged with calling Mary Evans 'old bitch of a whore and only fit for dogs and that he had seen dogs lay with her in the street often' his proctor convinced the court that only 'old bitch of a whore' was actionable in the church court, and these were the words in his penance. Evans v. Bryant, D/D/Ca 434 (1775). Bestiality was outside the jurisdiction of the court, the crime itself being a felony by statute since the reign of Henry VIII, which may account for its rarity in the lexicon of defamation: Sharpe, Defamation and Sexual Slander, pp. 14-15. When it did come up, it was used to indicate a complete lack of exclusivity rather than a particular sexual practise.

town of Shepton Mallet, where she and her defamer lived.<sup>22</sup>

Avon Street, in Bath, was notorious for its prostitution and not surprisingly figured in defamatory speech.

Catherine Collett, who lived in nearby Bath Street, was 'as big a whore as any in Avon Street' according to her neighbour William Tarring.<sup>23</sup> Francis Flanne's defamation of Sarah Brooks combines both topography (Portsmouth Point was another centre of prostitution) and locality: 'she was a whore to William Petty by laying with him on a load of Hay coming from Chilthorne to Odcombe and in a field of Beans called "Byson" ... There is not a bigger whore on Portsmouth Point than she is ... There is not a bigger whore in England than she is'.<sup>24</sup>

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<sup>22</sup>Wookey v. Vowles, D/D/Ca 437 (1788); Loney v. Hill and Hill, D/D/Ca 423 (1746); Jeanes v. Durston, Durston, D/D/Ca 434 (1776); Williams v. Meaker, D/D/Ca 434, 435 (1776); Veal v. West, D/D/Ca 431 (1769); Allen v. Moody, D/D/Ca 477 (1834) (A.W.).

<sup>23</sup>Avon Street was notorious to Parson Skinner, whose parish of Camerton lay not many miles away. He describes meeting a mumper woman from 'that wretched place Avon Street, in Bath' who had come into the country to sell matches at the time of a cholera outbreak. Skinner immediately went into shops, pubs and houses to warn his parishioners against taking in mumpers, particularly from Avon Street which had suffered disproportionately from the disease. Skinner had another parishioner, 'a poor wretched old man who is brought to the severest misery', whose wife had deserted him and gone to live in an Avon Street brothel: Skinner, Journal, pp. 292; 306. See also Collett v. Tarring, D/D/Ca 451 (1822).

<sup>24</sup>Brooks v. Flanne, D/D/Ca 451 (1825). Locality, which was carefully specified in the seventeenth-century material Quaife studied, was usually ignored in our period. Robert White the younger was prosecuted for saying that Sarah Bethell was 'a whore of George Walker and had lain



The concomitant of all this sexual activity was, of course, venereal disease. Anna Wallis was 'whore runagale [?] whore and a poxed whore'; Theodosia Needs was a 'hottarsed whore a hottarsed bitch and strumpet'; Grace Taylor 'had got the pox and had given it to a man in Bath'.<sup>25</sup> Adjectives such as 'stinking' and 'rafty' were used to describe poxy women and barrenness, the result of severe venereal disease, was not forgotten by defamers. Quaife has suggested that allegations including venereal disease were particularly humiliating to the husbands of defamed women, and constituted an aggravation of their cuckoldry. As we have already noted, an allusion to venereal disease made any defamation actionable in the common law courts. Though the church courts continued to entertain these causes into the nineteenth century, they were not nearly as numerous as they had been at York in previous centuries, an indication, perhaps, of the gradual triumph of the common law.<sup>26</sup>

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with him all night in a Barn' and that Phillippa Bethell had lain with Walter Pain the 'most part of the night in a Barn': Bethell, Bethell v. White, D/D/Ca 433 (1773). Hayfields and haycarts were also identified as the scenes of sexual liaisons: see Pim v. Baron otherwise Barnes, D/D/Ca 478 (1787) (A.W.); Batten v. Adams, D/D/Ca 452 (1830); Andrews v. Adams, D/D/Ca 441 (1832).

<sup>25</sup>Wallis v. George, D/D/Ca 423 (1746); Needs v. Argus, D/D/Ca 425 (1754); Taylor v. Pemberton, D/D/Ca 437 (1791).

<sup>26</sup>Quaife, Wanton Wenches, p. 186; Sharpe, Defamation and Sexual Slander.

The insults used against male plaintiffs were, up to a point, identical to those used against women. Men were accused of fathering bastards and committing adultery; those who were called sons of whores or cuckolds could call on their mothers or wives to bring an action. There were a few words reserved for men: Thomas Sampson and Stephen Loveless were whoremasters as well as bastards and sons of whores; Hezekiah Cole was a 'son of a bitch, son of a whore and whore's bird'.<sup>27</sup> There is little to distinguish between male and female defendants. Ann Jones said that Daniel Oakes 'had a whore kept for him meaning...Oakes kept unlawful company with a lewd woman', and Ann Beaman described William Loaden as an 'incontinent Liver'.<sup>28</sup> The themes were constant: adultery and illegitimate birth; and by the end of the eighteenth century, these accusations had ceased to provoke litigation.

The language of defamation, in eighteenth- and nineteenth-century Somerset, was the language of female sexual misbehaviour, and particularly of the misbehaviour of wives. Sexual relations with a man other than one's husband, or, if you were an unmarried woman, with any man

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<sup>27</sup>Sampson v. Broderip, D/D/Ca 415 (1735); Loveless v. Cabell, D/D/Ca 430 (1766); Cole v. Ozen, D/D/Ca 435 (1778). Sampson also confronted Broderip at Assizes, where he accused him of abusing him in an outrageous manner and giving threats and menaces: ASSI 24/39 (Summer, 1735).

<sup>28</sup>Oakes v. Jones, D/D/Ca 425 (1754); Loaden v. Beaman, D/D/Ca 431 (1767).

at all, constituted the chief complaint. The consequences of illicit sexual acts--illegitimate children, venereal disease, prenuptial pregnancy--are acknowledged in this vocabulary, as are prostitution and some of the most serious sexual offences, such as incest or bestiality. The language of defamation cannot be used, however, to compile a catalogue of sexual activity or to measure its incidence. Increasingly hemmed in by legal restrictions and a redefinition of male honour, actionable language in our period lost much of its richness and diversity. Neither the willingness of judges nor the zeal of litigants could entirely overcome these obstacles, and though there was often a wide divergence between legal theory and practise, there is no record of a cause successfully prosecuted at Wells that did not rest on the assumption of illicit sexual activity. Moreover, we are shut out from the systems of meaning and recognition that would make sense of defamatory statements. We can analyse the crudest facts of gender or geography; rarely can we unravel the allusions that obscure the social implications of a particular combination of words and set them in context.

Any map of sexuality constructed from these six hundred or so insults is bound to be distorted by the law and by popular perception. It is not as if Somerset was overrun with adulterous wives, and surely the activities of unwed or hastily wed mothers were more visible than those

of adulteresses in our period. The words we have counted and categorised are indicators that reveal a small area of verbal abuse that was still considered damaging enough to warrant litigation. The suspicion of female sexuality outside marriage continued to have this disruptive power, and it is likely that this power was enhanced as a result of the popular adoption of the double standard. The unmarried, on the other hand, were remarkably free of the correctional supervision of the church courts in the eighteenth century and appear infrequently as litigants in defamation causes. Instead, they enacted their significant sexual rituals, those of courtship, beneath the eyes of families, friends and neighbours and increasingly, where these failed, beneath the watchful gaze of local poor law officials. Consequently, any picture of their sexual activity pieced together from defamatory insults is an incomplete one. Prenuptial pregnancy, while still grist for the defamer's mill, was ignored by eighteenth-century authorities, civil and ecclesiastical; and the premarital sexuality of courtship, by definition exclusive and intended to lead to marriage, was tolerated and therefore rarely formed the basis of a defamatory insult. Thus, we may learn as much about the components of sexual reputation, and about the tension between popular and official definitions of good behaviour, from the silences of the libels as from their recorded contents.

In seeking an explanation for the balance between male and female plaintiffs, and for related alterations in the vocabulary of defamation, we must take into account three factors: the relationship between prosecution and behaviour; the position of the female plaintiff under ecclesiastical law; and the evolution of the double standard. Just as litigation does not necessarily bear a direct or constant relation to actual behaviour, the gender of the plaintiff does not always reveal whose reputation has suffered abuse. That men continued to be subject to at least one traditional indirect form of defamation, the allegation of cuckoldry, can be shown by counting the number of married female plaintiffs; but a look at the causes commenced after 1781, when spouses ceased to litigate jointly, and an analysis of prosecutions of or by married couples confirm that defamers did not always use the wife as a medium for abusing the husband.<sup>29</sup> From depositions it can be seen that the choice of plaintiff and defendant (either a woman or a couple) had more to do with court style than with the realities of slanging matches, which could as easily involve a pair of wives whose absent husbands were later cited with them as they could the

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<sup>29</sup>Spouses ceased to litigate jointly in 1781 and causes involving married couples were most numerous in the thirty years after 1744 when 156 out of 179 such causes occurred. In causes where libels survive, it is the defamation of the married woman that is at issue.

entire personnel, kin and servant, of two households. In later years, when registrars had reverted to nominating married women without their husbands in Act books and in most cause papers, proxies continued to bear a good many husbands' signatures, testifying to the fact that proctors were frequently hired by the married couple and not simply by the wife.

There are also positive factors that may help to explain the continuing attractiveness of ecclesiastical justice to married women. Keith Thomas argues that 'the Christian insistence upon the equality of the two sexes before God was not sufficient to bring about a radical change in social attitudes', but it was enough to protect married women's recourse to law to defend their reputations.<sup>30</sup> Married women, who laboured under particular restraints in going to law, had unusual freedom in prosecuting their defamers. A woman could institute a suit independently of her husband for words charging her with adultery because it was she who was liable to do penance for the offence. Men charged with cuckoldry could only prosecute if they were joined by their wives, who in fact sustained the criminal accusation.<sup>31</sup> A husband could not release a wife's suit because the restoration of her

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<sup>30</sup>Thomas, 'The Double Standard', p. 204.

<sup>31</sup>Burn, Ecclesiastical Law, 6th ed. (1797), 2:130.

good fame was not a matter susceptible to compromise.<sup>32</sup> He could, however, release the costs, and it is the difficulties arising from this situation which may have led to the shift in court style that marked the middle years of the eighteenth century, when husbands and wives were jointly nominated in legal documents. Mary King confessed to calling Honor, the wife of Mather Frappel, a whore and performed penance in Chew Magna vestry in 1755. Originally released from the costs of 10s. by reason of her poverty, King's exemption was rescinded when an astute proctor noted that only her husband was qualified to swear that she was worth less than £5 with her debts paid.<sup>33</sup> Another wily proctor waited until a sentence had been promulgated against his client before announcing that she was a feme covert, and as her husband was not party to the suit, she could not be condemned in expenses. The judge, after deliberation, agreed and assigned penance but no costs.<sup>34</sup>

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<sup>32</sup>Burn, Ecclesiastical Law, 1:483.

<sup>33</sup>Frappel v. King, D/D/Ca 425 (1755). According to Burn, neither the plaintiff nor the defendant in a defamation cause could appear in forma pauperis. Whether this was a later development, or whether the virtual absence of paupers at Wells reflects the state of the law, I do not know: Ecclesiastical Law, 8th ed. (1824), 2:136.

<sup>34</sup>Smith v. Barnard, D/D/Ca 420,421 (1742). Because marriage altered the financial status of a female litigant, a marriage solemnised after proceedings had commenced could alter their course. A cause between Mary Collins and Jane, the wife of John Bateman, was abated by Collins's marriage: D/D/Ca 449, 450 (1755). The marriage of Jane Thomas, a widow, to Thomas Bryant, one of her

No discussion of the double standard can ignore Keith Thomas's ground-breaking essay, but his work on the origins and operation of the double standard deserves to be expanded. Though Thomas limits his discussion to adultery and its ramifications, the double standard had a far wider sphere of operation. Female reputation was not maintained merely by avoiding illicit sexual relations, but by keeping suspicion of all kinds at bay. Rumour, insinuation, gossip: all these could damage a good fame. Thomas also contends that 'Amongst the lowest classes of society the tradition of promiscuity was too strong to allow the emergence of so sophisticated a concept as that of the double standard'.<sup>35</sup> Thomas located the origin of the double standard among the upper classes, but more recently Sharpe has suggested that attitudes toward sexual reputation--the double standard among them--filtered down to the lower orders. '[T]he extreme sensitivity over such matters among the middling sort and the stable, "respectable" poor of Tudor and Stuart England is', according to Sharpe, 'a sign of their growing desire to mark their conduct off from that of the

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witnesses, was not accepted with such equanimity by John Ball, who had denied calling her a whore. Ball was eventually dismissed with costs, but his proctor learned of the marriage before the costs were taxed and he immediately attempted to reopen proceedings against the married couple. Four years later Jane and Thomas Bryant were excommunicated for failing to pay £3 in costs: Thomas v. Ball, D/D/Ca 425, 426 (1754).

<sup>35</sup>Thomas, 'Double Standard', p. 206.



disorderly and the ungodly poor'.<sup>36</sup> Hence, it is in the changing patterns of prosecution for defamation that we may search for evidence of the double standard and its operation among the lower orders.

The double standard was adopted by the plebs, as we might expect, selectively. Plebeian men were slow to shift their focus from their own sexual behaviour to that of their wives, and though the double standard eventually released men from the obligation to defend their sexual reputations at law, court statistics from York and Somerset indicate that the process took at least two centuries. In York, men accounted for 49% of all defamation plaintiffs in the late sixteenth century and 24% a century later.<sup>37</sup> If

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<sup>36</sup>Sharpe, Defamation and Sexual Slander, p. 25. The progress of the double standard differed not only from class to class, but from region to region. In Scotland, the common law (which made divorce for adultery available to wives as well as to husbands from 1560) and the Kirk (which was far more even-handed in punishing offenders of both sexes in bastardy causes and fiercely condemned sexual promiscuity regardless of sex) were bulwarks against the popular adoption of the double standard. Such condemnation of the double standard was not infrequently linked to an ideal of equality within marriage which is not irrelevant to traditional plebeian sexual culture: Smith, 'Sexual Mores and Attitudes in Enlightenment Scotland', pp. 50-51; 62. See also the incident in Smollett's Roderick Random in which the Scottish apothecary arranges to attribute his bastard to Roderick after spiriting him out of town, thus saving his personal and business reputation (p. 30).

<sup>37</sup>Sharpe, Defamation and Sexual Slander, pp. 27-8. Based on totals, rather than samples, for the 1590s and 1690s. The latter group were accused of sexual misdemeanours less frequently. In London, by contrast, the process appears to have taken place more quickly. Only 19 male plaintiffs (6%) appeared before the London consistory

early eighteenth-century defamation in Somerset continues to reveal a transitional world in which male sexual activity could be the subject of boasting or of litigation, all traces of that ambiguity disappear from the church court records by the end of the century when, with the considerable help of court personnel, male plaintiffs in defamation suits became convinced that they need not litigate at Wells.

The double standard made it unnecessary for men to prosecute those who broadcast their sexual activities, but it did not exempt married men from recognising slights to themselves in the insults aimed at their wives. It is this male property in the reputations of their wives that in part explains the preponderance of married female plaintiffs at Wells. Female sexual reputation was built upon the concept of chastity, and it is no fluke that the word 'common' was favoured by defamers, nor that married women were so frequently the object of defamation. Trumbach has written, 'it was always the absence of exclusivity that was most shocking', and for married women, who were legitimately sexually active, exclusivity was difficult to confirm.<sup>38</sup> The double standard, with

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between 1700 and 1709; the number was reduced to 2 (out of 134) between 1750 and 1759; and no male plaintiffs brought suit between 1790 and 1799: Trumbach, 'Whores and Bastards', Tables I and II, p. 14.

<sup>38</sup>Trumbach, 'Whores and Bastards', p. 10.

its premium on male sexual prowess and on female chastity, made the direct defence of male honour through litigation anachronistic, but it simultaneously inspired a fierce defence of the honour of married women. A man's sexual reputation remained vulnerable through his wife and the charge of cuckoldry touched the shrinking nerve of male sexual reputation and played some role in the majority of defamation causes in eighteenth-and nineteenth-century Somerset.<sup>39</sup>

Yet if the fundamental principle of the double standard, the existence of separate and contradictory codes of sexual behaviour for men and women, won acceptance among the plebs before the mid-nineteenth century, the ideal of respectability built on privacy and decorum that accompanied it did not. Among the lower classes the double standard was absorbed within a traditional framework in which reputation remained a public matter, susceptible to communal arbitration and public restoration. This made it possible for plebeian men and women to continue to perform

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<sup>39</sup>As we have already noted, accusations of adultery abound among the records of the courts that have been studied. Considering that married women brought so many causes at Norwich and Winchester, Houlbrooke was not surprised to find that accusations of adultery accounted for the bulk of the causes in his period. He also recorded a period at Norwich when male plaintiffs outnumbered females but he has a convincing explanation for this (see Chapter 4, above). In the nineteenth century, particularly, court personnel at Wells could not hope to entertain more lucrative court business: Houlbrooke, Church Courts and the People, pp. 80-81.

penance and to seek something other than financial compensation for the insults they received.

Thus, the plebs remained loyal to the old system of redress at a time when reputation was increasingly a private matter and its damage assessed in monetary terms. The public ritual of penance appeared archaic and indecorous in this light; even defamation suits seemed a perverse form of advertisement where none was needed. Plebeian litigants undoubtedly had to contend with uncooperative members of the middle and upper classes, churchwardens and court personnel, who found the conjunction of class, gender and sexuality that defamation litigation had come to represent increasingly unrespectable. This clash over differing notions of reputation and its defence was re-enacted in every diocese in which the church courts continued to function, and in Somerset as elsewhere it shaped legal practise and determined patterns of litigation in our period. The persistence of local litigants and the tolerance of local court personnel in bringing and entertaining defamation suits, however, make Somerset almost unique to the study of plebeian sexual culture. To these court officials and their clients, not infrequently at odds, we owe the documentation of changing standards and particularly of the transmission and adoption of the double standard in the eighteenth and nineteenth centuries.

## II. Geography

The geographical distribution of defamation may very well be a result, at least in part, of its gender distribution.<sup>40</sup> Defamation was not only a wives' game, but it was also an intraparochial one. In 87% of the defamation causes in Somerset, the plaintiff and the defendant resided in the same parish; of the 176 causes where this was not the case, in ninety-five the parties were from adjacent parishes and in a further thirty-eight a single parish separated the residences.<sup>41</sup> This may reflect the lower mobility of women, who were less likely to work far from home. It surely also reflects the tendency to prosecute defamation when it was committed by someone known to the plaintiff, and before one's own neighbours and acquaintances. Burn, in this discussion of defamation, emphasises that the place of defamation does not bar prosecution: if it did, 'it would give licence to all

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<sup>40</sup>The following discussion of geographical distribution refers by necessity largely to the eastern section of the county. Without the records of the archdeaconry of Taunton, we have only the incomplete record of causes that found their way into the diocesan court. The western part of the county was far less densely settled than the eastern side, and if it conformed to the patterns established in the following pages, defamation causes were probably rarer than in the east. Distance and poor transportation were factors in keeping many Taunton causes out of the episcopal court.

<sup>41</sup>In some of the causes, outlying hamlets may have made nonsense of parochial boundaries. Of the remaining forty-three causes, thirteen included a party from outside the county (six were from Bristol).

the market women, when they were in London, to defame their neighbours without fear of punishment'.<sup>42</sup> But what was of concern to the people of Somerset was not so much defamation committed at great distances, but words spoken where they were well known and where their reputations had currency.

The decision to prosecute, then, was partly conditioned by this concern with locality. Given that most prosecutions arose within a single parish, our next step should be to examine the parishes that sent defamation causes to Wells. There are many ways of approaching this problem: regionally, by type of settlement, by predominant economic activity, by density of population. Given a county of almost 500 parishes viewed over a period of 120 years, I have chosen to use the available census data to determine whether defamation was more likely to occur in small villages or large towns. There are, of course, difficulties in using the census of 1801 as the standard of comparison for the eighteenth century. However, I hope that the categories are sufficiently broad and the population trend sufficiently straightforward to diminish

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<sup>42</sup>Burn, Ecclesiastical Law, 1:481. In 76% of the 550 causes studied by Trumbach, the litigants were neighbours or at least from the same parish: 'Whores and Bastards', p. 6. Ingram, 'Ecclesiastical Justice in Wiltshire', p. 295, also notes the ubiquity of neighbours.

the possibility of gross error.<sup>43</sup>

In 1801, the population of Somerset was divided roughly in thirds. Thirty-two percent lived in parishes with fewer than 500 inhabitants; 39% occupied the middle range, parishes with between 500 and 2000 inhabitants; and 29% lived in large towns with populations over 2000. This final group was comprised of eighteen large parishes containing 23% of the population and Bath which, for census purposes, included the old city parishes of St. James, St. Michael, St. Peter and St. Paul and Walcot. The distribution of defamation causes between 1733 and 1799, and as the accompanying table illustrates, did not reflect this population pattern.

Between 1801 and 1851 the population of the county

TABLE VC

PARISH SIZE, 1801<sup>44</sup>

Population	<500	<1000	<1500	<2000	>2000
causes	171	192	102	39	379
% of total causes	19%	22%	12%	4%	43%
% of pop. (1801)	32%	23%	11%	5%	29%

<sup>43</sup>See, for instance, the population estimates for the eighteenth century for the county included in the Census of 1801; and E.A. Wrigley, 'The Growth of Population in Eighteenth-Century England: A Conundrum Resolved', Past and Present 98 (February 1983): 121-150.

<sup>44</sup>Based on population in Census of 1801. I have allocated causes involving two parishes to the category of the more populous parish. This, because I think that where there is a great disparity in population sizes in the two parishes, the defamation may have gone unprosecuted had it

increased from 273,577 to 443,916, the bulk of the increase being absorbed by the growing contingent of larger towns. There were, in 1851, twenty-three parishes with between 1500 and 2000 inhabitants, as opposed to only nine fifty years previously. Bath still held 6% of the county's population, but there were now thirty five parishes with more than 2000 inhabitants. There is still a good fit between population size and prosecutions in the middle range in 1851, but the divergence at either end has become even more pronounced. Therefore, while locality was an important factor in the prosecution of defamation, the size of the parish must have

TABLE VD

PARISH SIZE, 1851<sup>45</sup>

Population	<500	<1000	<1500	<2000	>2000
causes	32	63	48	22	237
% of total causes	8%	16%	12%	5%	59%
% of pop. (1851)	18%	16%	13%	9%	45%

occurred entirely within the smaller parish. The contact with the larger parish may have induced the defamation and the prosecution. The figures for the archidiaconal court of Wells are included with those of the episcopal court. The archdeacon's court did not seem to have any monopoly on causes from small parishes, and the distribution by parish size was roughly the same for the two courts.

<sup>45</sup>In fifty years of rapid population growth it seemed worthwhile to distinguish a bit more carefully by decade. Therefore, I have judged parish size from each census: causes commenced between 1800 and 1809 by the 1811 census, 1810-1819 by the 1821 census, etc. By then comparing these with the population statistics for 1851, I have if anything underestimated the contribution of the larger parishes, whose ranks were increasing from census to census.



set some limits to that locality.

The data we have presented suggest that the defamatory activities of a third of the population in the eighteenth century were peculiarly invisible to the church courts, and as this sector decreased, so did its visibility. Distinctions also arise among the litigious larger towns.<sup>46</sup> Market towns constituted a large component of the populous parishes and they commanded court time out of proportion to their numbers or population. These towns held onto a constant share of the population (31%) between 1801 and 1851, some of them growing faster than the overall population of the county in that period. Smaller market towns, those with fewer than 2000 inhabitants, contributed a reduced share of the defamation causes originating in market towns in both periods: 20% between 1733 and 1799, and only 9% between 1800 and 1849. Market towns taken together accounted for 50% of all defamation causes prior to 1800 (442 out of 890) and 57% between 1800 and 1849 (231 out of 408). (Bath, of course, generated a disproportionate amount of litigation: This will be discussed in Chapter 8). As to other large

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<sup>46</sup>Of the fourteen market towns in the western archdeaconry, seven did not send any causes to the diocesan court. Those closest to Wells sent the most: Crewkerne (20); Bridgewater (18); Chard (8). A few more came from distant towns: Wellington (5); Taunton (4); Minehead (3); Dunster (2). Without the Taunton court records, we cannot know if market towns were as significant to defamation litigation as their eastern counterparts.

towns, there were only four with more than 2000 inhabitants in 1801, and of these Bedminster, a suburb of Bristol, contributed twenty-nine out of thirty causes in this category. By 1851 there were fifteen such towns, and they accounted for thirty-seven out of 200 causes for towns with more than 2000 inhabitants. This meant that though they contained 31% of the population of the largest towns, they generated only 19% of the causes while twenty market towns produced 81% of the causes. Finally, sixteen of the causes that brought together litigants from two distant parishes included at least one litigant from a market town, while fourteen did not.

Unless we assume that the inhabitants of small villages exercised a tighter control over their tongues than did their neighbours in the larger market towns, we must identify the factors that account for their divergent records of litigation. The restraints on defamatory activity and on litigation in small parishes were social, economic and functional. It is possible that in very small villages the sense of accommodation developed by residents made defamation too disruptive to be more than a rare occurrence. And, when both parties to a dispute were well-known, intervention and arbitration were more likely to obviate or shorten litigation. Sharpe, who addresses the issue of village harmony, does not explore the size of communities in his discussion of arbitration, but it is

clear that many of his settlements arise in small parishes.<sup>47</sup> The existence of a mutual acquaintance with some local standing not only willing but actively concerned to effect a reconciliation was perhaps a feature of smaller, rather than larger villages. The cost and effort of prosecution may also have acted as a deterrent; if not enough to end defamation then to keep it out of the courts. Finally, defamation, in order to be effective, had to be able to take advantage of a degree of uncertainty. In an age in which the victims of defamation were no longer necessarily required to clear their names in court, when the defamation of men was viewed with increasing complacency and when the spiritual health of accuser and accused sank into obscurity, one of the primary motivations of litigants was to retrieve a temporal reputation that had been jeopardised by verbal abuse. Thus, defamation meant very little when it occurred among total strangers (unless one was dependent on those strangers for a livelihood), and it may have been equally futile in a setting where characters were perfectly well-known. Avenues for suspicion continued to thrive, particularly in a mobile age, but the statistics compiled for litigation arising in small villages suggest that disputes were often settled without resorting to law.

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<sup>47</sup>See the discussion of arbitration in Sharpe, 'Litigation and Human Relations in Early Modern England'.

Market towns, large and densely populated (seventeen of the eastern towns and the western towns that sent causes to the diocesan court had more, often many more, people per acre than the county as a whole in 1801 and in 1851) and often sheltering more women than men, provided an environment favourable to defamation and its prosecution. Bath, which was a city rather than a town, and full of women, leaves a well-documented history of activities, opportunities and social relations that led to the prosecution of defamation. While defamation in small parishes tended to involve agricultural accidents or small domestic gatherings of women, defamation in market towns took place in pubs, at markets, in and around fairs and on the street before neighbours. One was more likely to be in a place where friends, acquaintances and strangers were intermingled. A defamatory insult delivered in these surroundings might be vehemently denied by friends, but the strangers and particularly the acquaintances might provide a medium for spreading that insult beyond the area, whether residential or work-centered, where one's fame was safe. Business in these towns likewise mixed the known, the unknown and the well-known, and a livelihood could be very forcefully affected by a bad fame whether one was a washerwoman or an innkeeper. Locality remained salient in the towns, but it had wider and less permanent boundaries. Certainly, facilities for initiating litigation

abounded in the towns. Lawyers who maintained contacts with court personnel in Wells resided in most large towns and would often act as intermediaries between plaintiffs and distant proctors, conducting negotiations by mail. Apparitors came through these centres on their rounds, and their signatures on so many proxies suggest that many parties never journeyed to Wells, transacting their business this way instead. Town occupations, as opposed to agricultural ones, may have left more time and flexibility to seek legal redress and wages may have made it easier to pay for it. Where litigation might be deterred in a small village by cost and effort, it was encouraged in towns by, among other things, easier access to the courts.<sup>48</sup>

Similarly, figures of sufficient authority and reasonable access who could publicise the results of their arbitration might be difficult to locate in the socially diversified town; those with authority had ceased to be accessible and had also ceased to concern themselves with disruptions of neighbourly harmony. When the well-off or the powerful intervened in defamation causes in Somerset their advice was to prosecute, and it was usually because their reputations were concerned in the insults.

Reputation, then, was both more public and more private than in the village. The communities within which

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<sup>48</sup>Distance, while undoubtedly a factor, did not operate constantly: see map.

defamatory insults reverberated were more circumscribed and transient (frequent moves, even within the same town, could unravel neighbourhood ties that were in any case strictly limited in space) and disruption might be most apparent at the level of the couple or family. Ann Lisk, who witnessed the defamation of her Glastonbury neighbour Mary Whitcombe, could say that her husband was a 'fickle man, and that he may possibly not think so well of her as he did before'.<sup>49</sup> On the other hand, when they reached the more distant ears of employers, or suitors, or creditors, or customers, defamatory words could wreak havoc with one's future and security. Defamation litigation was, in the towns, self-defence; in the villages, it was an act of communal restoration.

### III. Occupation and Class

Occupational data might be expected to elucidate the divergent records of small villages and large towns. There are, however, several ways in which occupational data are flawed and which diminish their usefulness to this study. First, occupations are only sporadically recorded: occupation for at least one party is listed in only about 15% of the causes, and many of these include causes where occupations were inferred from depositions. The occupations

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<sup>49</sup>Whitcombe v. Ellis, D/D/Ca 451 (1824) and D/D/C (1824).

of witnesses are recorded far more systematically. Secondly, women were consistently identified by marital status (spinster, singlewoman, widow, wife) rather than by occupation. For litigation that so frequently involved women as plaintiffs and defendants, this is disastrous. Female occupations, which tended to be less formal and therefore less visible than those of men, can occasionally be deduced from descriptions in depositions; women who worked alongside their husbands in shops or pubs or market stalls emerge most clearly in this way. Some married women and a few spinsters, particularly minors, may be classified--not entirely satisfactorily--according to the occupation of husband or father. Thirdly, though litigants and witnesses often provided their own occupational descriptions, these do not necessarily encompass the variety of their activities or even appear to fit the jobs they were found doing when the legal process intervened in their daily lives. Survival required a strategy of complementary employments for men as well as for women. Susan Dorney, the daughter of a turnpike gatekeeper in Chew Magna, hired herself out as a lying-in nurse, a 'workwoman' and a seamstress as well as collecting tolls for her father, running errands for her mother and raising a small child. A number of people in town thought she was engaged in the sex trade as well, though in an amateur capacity. James Pearce kept a public house in Frome and

made shoes to supplement his income. John Colley, who described himself as a chairman (as did many men in Bath) was 'in Camden Place gravelling a walk' when Mary Ann Baker asked him to help her fetch her trunk from her former mistress's house, setting in train a series of events that ended with Colley being called as a witness to Baker's defamation by her mistress. John Clack, another Bath witness, was both chairman and grocer, and he declared that his day in court would make him 'a loser as his wife and himself being obliged to attend here his shop is shut up and his business \_\_\_?'. Finally, in an economy where agriculture predominated, few people were without their tie to the land, whether it was a garden, a few sheep or a field. James Pobjay, a malster, defamed a spinster, Sarah Andrews, who 'was at present courted by a Gentleman Clothier of the Town of Frome Selwood in a very honourable way'. The dispute arose over the straying of Pobjay's sheep onto Andrews's land, and Andrews's impounding of the beasts; the verbal insults gained in significance because the Gentleman Clothier was 'much displeased at the...Scandal'.<sup>50</sup>

The Somerset church courts were primarily used, in our period, by members of the lower orders, and

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<sup>50</sup>Dorney v. Webb, D/D/Ca 452, 441, 454 (1832) and D/D/C (1832); Hinton v. Pearce, D/D/Ca 452 (1831) and D/D/C (1831); Baker v. Stone, D/D/Ca 452 (1829) and D/D/C (1829); Lowe v. Davis, D/D/Ca 440 (1805) and D/D/C (1805); Andrews v. Pobjay, D/D/Ca 436, 397 (1782) and D/D/C (1782).



particularly by craftsmen and tradespeople. The monopolisation of defamation litigation by the lower orders was, as far as one can tell, a post-Restoration occurrence.<sup>51</sup> Even in seventeenth-century Somerset, Quaife finds suits initiated by members of the upper classes and suggests that defamation was still successfully used by the lower orders against men of authority and their wives: 'The accusation of adultery was a powerful weapon in the personal and political feuds of the parish and in the fight for economic survival'. The 'make-believe cuckolding of the local establishment' (whether religious or

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<sup>51</sup>Little systematic work has been done on the social status of litigants. Christopher Hill has drawn conclusions about the courts' clients based on a bourgeois reaction against ecclesiastical supervision: 'the social changes which led to resentment of ecclesiastical supervision affected almost exclusively those who had credit and property to lose, and yet were not wealthy or powerful enough to be immune from the attentions of the hierarchy. The very poor could not afford to litigate': Society and Puritanism, 2nd ed., p. 302. Marchant suggests that the church courts operated to make examples of the wealthy; church discipline did not touch those who had nothing to lose, such as paupers, and the slightly better-off were often excused from fees or allowed to limit their appearances in court: Court under the Law, pp. 228-29. Houlbrooke supposes that the poor were excused from defamation suits intended to save them from prosecution for sexual immorality, which makes one wonder about upper class complicity in the promiscuity of the lower orders: Church Courts and the People, p. 80. In early seventeenth-century Wiltshire, litigants were drawn from the middling ranks, though some causes were byproducts of 'long standing struggles for dominance among wealthy yeomen or minor gentry families in particular villages': Ingram, 'Ecclesiastical Justice in Wiltshire', pp. 295; 302. There is reason to believe that the social composition of litigants changed when the courts were revived at the Restoration. Pemberton identifies litigants as yeomen, small freeholders, labourers, tradesmen and artisans:

secular) which Quaife finds ubiquitous is less discernible in our period, when cross-class accusations were usually confined to different sectors of the plebs.<sup>52</sup> In the pages that follow we will more fully describe the social location of the courts' defamation clientele by tabulating their occupations and by examining the ways in which they incorporated occupational designations in their defamatory insults. The preponderance of lower class litigants suggests that attitudes towards reputation and its defence were class-specific in the eighteenth century. Therefore, the final aim of this section will be to illuminate the views and behaviour of those who, for reasons of position, status or wealth, did not use the church courts. Here we will turn to literary evidence and consult the autobiographical writings of four men and women who lived and worked in Somerset at different times between 1700 and 1850.

A simple occupation table for the parties to defamation suits would look like Table VE.

Even from this defective data, one can see that the contention of the parliamentary witnesses was not without

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'Nottingham 1660-1689', Chap. V, part 1, p. 36. Sharpe describes litigants at York in the early modern period as 'the rural middling sort; tradesmen, shopkeepers, yeomen, artisans, and the wives of members of these occupational groups': Defamation and Sexual Slander, p. 17.

<sup>52</sup>Quaife does not subject his causes to any rigorous analysis, but simply offers examples: Wanton Wenches, pp. 131; 158-60.

TABLE VE  
OCCUPATIONS

1. Occupations of Defamed Women (Excluding Bath)

(Gentlemen)	3	3 gentry
(Yeoman)	6	
(Yeoman)	4	
(Daughter of yeoman)		11 farmers
(Apothecary), (minister), (druggist), schoolmistress		4 professional/ official
(Innkeepers, publicans, etc.), (innkeeper/ victualler), (daughter of tradesperson) (two each)	6	
(Innkeeper/cooper), (fiancee of Gentleman Clothier), (victualler), (dyemaster), (butcher), innkeeper, etc., (grocer/ tea-dealer), (innkeeper, etc.), (coal-dealer), (fishmonger)	10	16 tradespeople
(Plasterer), (carpenter) (four each)	8	
(Cordwainer)	2	
(Perukemaker), (currier), (dyer), (leather- dresser), (plasterer/tiler), (tailor), (thatcher), (plumber/glazier) <sup>a</sup>	8	18 craftspeople
Servant <sup>b</sup>	4	
(Labourer)	3	
(Mariner), pub pedlar (two each)	4	
(Miner), servant/assistant to tallow chandler, (glassman), (coal haulier)	4	15 labourers/ servants

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<sup>a</sup>Includes the wife of a plumber and glazier who, with her husband, took care of a parson's home in his absence.

<sup>b</sup>Includes a pub servant, a daughter of a cordwainer and a daughter of a turnpike gatekeeper.

## 2. Occupations of Female Defamers (Excluding Bath)

(Yeoman)	3	
(Yeoman)		4 farmers
(Minister)		1 professional/ official
(Victualler)	3	
(Baker), (tallow chandler), (butcher), (baker), (shopkeeper), (confectioner)	6	9 tradespeople
(Perukemaker), (tanner), (ship's carpenter), (watchmaker), (sawyer), (mason), (tailor), (plasterer/tyler), (carpenter), (joiner)	10	10 craftspeople
(Labourer) <sup>a</sup>	7	
(Miner), (dairyman), pub pedlar	3	10 labourers/ servants
		<hr/> 34

<sup>a</sup>Includes a labourer who also kept a beerhouse.

### 3. Occupations of Defamed Men (Excluding Bath)

Gentleman		1 gentry
Yeoman		1 farmer
Rector	2	
Attorney		3 professional/ official
Innkeeper, etc., butcher		2 tradespeople
Mason		1 craftsman
Husbandman		1 labourer/ servant
		<hr/> 9

### 4. Occupations of Male Defamers (Excluding Bath)

Gentleman			
Gentleman <sup>a</sup>	6	7 gentry	
Yeoman			
Yeoman <sup>b</sup>	4	5 farmers	
Minister, bailiff		2 professional/ official	
Innkeeper, etc., butcher, innkeeper, etc. <sup>c</sup> (four each)	12		
Victualler, malster, miller, shopkeeper, baker, horsedealer, coal merchant, butcher	8	20 tradespeople	
Blacksmith	3		
Plasterer/tyler, shoemaker/cordwainer, carpenter (two each)	6		
Sadler, cardmaker, papermaker, currier, plumber/glazier, staymaker, builder, blacksmith, plumber/glazier	9	18 craftsmen	

Labourer <sup>d</sup>	3	
Labourer, fisherman, gardener, gardener, tinworker/brazier, stockingmaker, haulier, coal haulier	8	11 labourers/ servants

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<sup>a</sup>Includes one baronet and one man identified elsewhere as a horsedealer.

<sup>b</sup>Includes one yeoman acting as Overseer of the Poor.

<sup>c</sup>Includes one man who described himself as a cordwainer as well.

<sup>d</sup>Includes one labourer who also kept a beer house.

### 5. Occupations of Defamed Women (Bath)

(Yeoman)		1 farmer
(Churchwarden)		1 professional/ official
(Shopkeeper), (fishmonger) (three each)	6	
(Victualler), (butcher), (innkeeper, etc.), innkeeper, etc., lodging house- keeper, butcher, (daughter of Bristol merchant), (innkeeper, etc.)	8	14 tradespeople
(Soap boiler)	2	
(Pig-killer), (blacksmith), (cooper), (carpenter), (shipwright), (gardener)	6	8 craftspeople
Housekeeper, servant, shopwoman/domestic		3 labourers/ servants
		<u>27</u>

### 6. Occupations of Female Defamers (Bath)

(Fishmonger), lodging housekeeper, (shopkeeper) (two each)	6	
(Innkeeper, etc.), shopkeeper, (butcher)	3	9 tradespeople
(Mason), (plasterer/tyler), (cordwainer)	3	3 craftspeople
(Gardener)	2	
(Chairman)		3 labourers/ servants
		<u>15</u>

### 7. Occupations of Male Defamers (Bath)

Yeoman		1 farmer
Captain	2	
Surgeon		3 professional/ official

Tea-dealer	2	
Innkeeper, etc., fishmonger, coal merchant, shopkeeper	4	6 tradespeople
Mason, tailor, tanner	3	3 craftsmen
Servant, gardener	2	2 labourers/ servants

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#### Notes on Occupation Tables

1. Occupations in parentheses are those of husbands unless otherwise indicated. Underlined occupations are from 18c. causes.
2. In causes where husband and wife are both cited as plaintiffs, the occupation has been assigned to the female category.
3. Occupations of individuals are counted each time they appear in a cause with a different adversary.
4. Occupations are drawn from church court records (designations on cause papers and inferences from depositions) and from Quarter Sessions records, particularly assault indictments. These latter designations were used only when there was reasonable evidence that it was the same person under discussion: same name, same name of spouse, same parish, same time period. Litigants described as labourers in Quarter Sessions records have not been included, because this label was applied indiscriminately and obscures more than it reveals.



its basis in fact. The majority of the litigants who can be identified in Somerset were tradesmen, craftsmen, their wives and daughters, but these men and women do not perfectly correspond to the 'lower orders' of the inquiry. 'Very small tradesmen and mechanics' are joined by larger tradesmen, professionals, yeomen and gentry. While these latter groups were quick to identify themselves in court, and are probably not under-represented here, the lengthy litigation more likely to turn up occupational information was too costly for most labourers and this no doubt artificially reduces their number in the table. Also under represented are those who worked in agriculture. Many litigants are described in depositions as being engaged in agricultural chores at the moment of defamation, but it is impossible to discover whether these people were labourers or farmers, and whether this constituted their primary employment.<sup>53</sup>

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<sup>53</sup>While the occupational designations in the 1801 census are too vague to use as a basis of comparison, both the 1801 and the 1851 censuses suggest the importance of agriculture to the local economy. Some use has been made by parochial historians of the enumerations of 1841 and 1851 (see Davis, 'Newton St. Loe', pp. 55-6 and Joan D. Peden, 'Pitminster: the 1851 Census' in Studies in Somerset History (University of Bristol Department of Extra-Mural Studies, 1971), pp. 8-11). Davis uses rather peculiar definitions of classes but concludes that the service occupations constituted the largest sector, and gardeners and domestics the largest groups within it (pp. 64-66). Pitminster, about three times as large as Newton St. Loe, had far fewer servants and many more agricultural labourers (many of whom were also paupers) and farmers; Peden also includes a list of the main crafts and trades

The distribution within the trades and crafts is far from random. People who worked in public houses and inns as publicans, servants and pedlars figure prominently in the table, as do others in the food trades. The building trades, those adjuncts to expansion, are very numerous, while traditional village trades are barely represented, perhaps because the villages themselves played such a small role in defamation litigation. Manufacturing trades, too, make only intermittent appearances. The textile and clothing trades boast only a staymaker, a cardmaker, some tailors, a stockingmaker and a Gentleman Clothier. (It is likely, however, that the litigants in the small number of causes, all of whose witnesses were drawn from the cloth trade, *belonged to this group as well*). Those craftsmen, tradesmen and officials (schoolmasters, churchwardens, parsons and overseers) who had constant contact with customers and clients or suffered from adversarial relations with the public, possible points of conflict are as visible as the need to publicly vindicate a slighted reputation. But for the many neighbours who defamed each other on streets or in houses, occupation may have had little bearing on their disputes. Patterns of residence and sociability and relations between the defamer and his victim may have had as much to do with the

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which gives some impression of the range of occupations one might find in a large, rural village at the end of our period (p. 10).

genesis of defamatory incidents as did work.

These patterns might be more readily established if occupations for both parties to a suit were available in all causes; unfortunately, this information is available in just over fifty suits, to which one can add a handful of suits in which occupations were not designated but a difference in status between the parties is apparent. Though statistically insignificant, about twice as many of these causes drew adversaries from different occupational ranks as from the same one.<sup>54</sup> A number of causes are ambiguous, as when Susanna Biffin, a woman described as a domestic and a shopwoman, is defamed by Charlotte Lawley, the wife of a neighbouring shopkeeper. Biffin is the sister of her employer's wife, possibly his lover, and is fully defended by his family. Her capacity to pursue litigation thus augmented, it is hard to classify her as a servant, particularly when one discovers that she is just one of several victims in a feud between the two commercial rivals.<sup>55</sup> More straightforward are confrontations between a wife of a yeoman and a butcher; between a carpenter's wife

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<sup>54</sup>Two designations are given in forty-eight causes. In the thirty causes that brought together litigants from different occupational categories, the plaintiff is of a higher rank than the defendant slightly more than half the time. These distinctions remain vague without a better understanding of how these people were ranked in their own communities.

<sup>55</sup>Biffin v. Lawley, D/D/Ca 441 (1834) and D/D/C (1834).

and a coal merchant; between a servant and her mistress; between a female pedlar and a gentleman; and between a yeoman's wife and a baronet. The boundaries that separate these causes from the intra-occupational disputes of labourers' wives, plasterers, fishmongers, innkeepers, butchers and women whose husbands append 'Esquire' to their names are blurred: without more circumstantial evidence, who can clearly distinguish a schoolmaster from an innkeeper, a plumber and glazier and his wife who take care of a parson's house from a female pedlar married to a labourer, a fishmonger from a sawyer? And how much more difficult to draw distinctions between wives whose duties and obligations, despite the different occupational designations of their husbands, may have been very similar.

Defamatory language itself provides some commentary on occupation and class, though occupational designations were not a common component of defamatory insults recorded in libels.<sup>56</sup> Papers in something under a tenth of the defamation causes contain statements linking a woman with a named man, but in only a fraction of these is the man identified by occupation. When Giles Little told Susan

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<sup>56</sup>Work was far less visible in the libels of our period--either as the place where defamation occurred, or as a descriptive element in the insult--than it may have been in earlier times. There is nothing to match the words recorded in a penance of 1732: 'Whore, Tom Gales Whore, she has lain with her apprentice Boys upon the Wool Baggs and that her husband J[ohn] Foy was a cuckoldy Dog and a hornified rogue'. From Hill Bishops, in D/D/C, box PB9.

Bennett 'thou go home and take thy rest Frank Sainsbury's whore', his auditors probably knew exactly who Frank Sainsbury was, whether or not he was married (Bennett was a spinster), what his local standing and reputation were. The same no doubt was true when Sarah Goater called Ann Westcott 'Mr. Lax's long-nosed whore'; when John Vagg told Hester Rogers she was 'a white liver'd whore, and George Ashman's whore'; and when Mary Baby said of Ann Elms that she was a 'whore and that John Giles had often lain with her'.<sup>57</sup> We, however, must limit ourselves to the cases where occupation was specified or is easily discovered.

The causes may be divided into several groups according to the occupation of the man or the status of the woman. While 'priest's whore' may have been the most common insult heard at the Norwich and Winchester courts in the second quarter of the sixteenth century, the naming of parsons as parties to illicit sexual activity was rare in eighteenth- and nineteenth-century Somerset.<sup>58</sup> When a parson's name was invoked, it seems to have been invoked intentionally. William Partridge called Rebecca Sansom, a spinster, 'a whore and Parson Cleeves's whore', while he

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<sup>57</sup>Bennett v. Little, D/D/Ca 442 (1838); Westcott v. Goater, D/D/Ca 397 (1784); Rogers v. Vagg, D/D/Ca 478 (1786) (A.W.); Elms v. Baby, D/D/Ca 478 (1783) (A.W.).

<sup>58</sup>Houlbrooke, Church Courts and the People, p. 81. Originally all clerical slander was within the jurisdiction of the church courts, but over time the distinction between ecclesiastical and civil slander came to be applied to the clergy as well: Burn, Ecclesiastical Law, 1:480.

used the simple epithet 'whore' to describe one of Sansom's married relatives, Elizabeth Sansom. William Cleaves was the curate of East Chinnock and Middle Chinnock, as well as North Perrott, the parish in which Partridge and the Sansoms resided. Hannah Pinkard, who had a long history of defaming Jane Newton, was heard calling her 'Mr. Castleman's whore'. Castleman was the married vicar of their parish, South Petherton. Because Pinkard waged such an extensive campaign against her adversary, it is impossible to gauge the significance of this remark, further than to say that the vicar's name would be universally recognised (and was, at least by the witnesses) and was therefore a symbol easily manipulated by defamers. John Haine told a group of neighbours that 'Mrs. Sanday left Glastonbury before Mr. Seabrook and went as far as Exeter where Mr. Seabrook met her and they slept together in one bed two Nights'; they immediately recognised Mr. Seabrook as a Dissenting minister who had recently left town. Esther Sanday, who was, no doubt, alerted by the same neighbours, prosecuted Haine; Mr. Seabrook, like Mr. Castleman and Parson Cleaves, played no part in the proceedings. There were three parsons who resorted to litigation: two in the manner of earlier centuries and a third, in 1843, indirectly. William Isaac did not limit himself to accusing his rector, the Rev. Thomas Wickham, of committing adultery with Christian Cox, but placed his

insults in the context of a general condemnation of his kind: 'God damn the parson who minds the parson of the parish'. Another cause arose when Mary Hill, a pedlar, told Frederick Board as he sat drinking in a pub that he 'would not be at Mr. Waits the Parson's at Chewstoke, if he wasn't fonder of his wife than he was of he...for she were a whore or she would not be there'. Jane Board had been a servant to the parson before her marriage, and she and her journeyman husband continued to look after Mr. Wait's house in his absence. Wait urged Jane Board to take Mary Hill to court, but he does not seem to have intervened on her husband's behalf when Board was sued in turn by Mrs. Hill.<sup>59</sup>

Jane Board was a whore to Mr. Waits her master as much as to Mr. Waits the parson. Allegations of sexual relations between masters and their servants form a second group, and are distinguished by an unusually frequent link with allegations of bastardy. This may reflect a popular tolerance of master-servant sex, as long as it did not result in illegitimate births; or it may equally be attributed to the peculiar plight of female servants who, separated from kin and friends, were more vulnerable than

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<sup>59</sup>Sansom, Sansom v. Partridge, D/D/Ca 478 (1787) (A.W.); Newton v. Pinkard, D/D/Ca 427, 428 (1762) and D/D/C (1762); Sanday v. Haine, D/D/C (1821). A third clerical cause was Vincent v. Read, D/D/Ca 467 (1754) (A.W.), in which a parson named Vincent accused John Read of 'speaking sundry irreverent and defamatory words'. See also Wickham v. Isaac, D/D/Ca 428 (1763); Board v. Hill and Hill v. Board, D/D/Ca 443 (1843) and D/D/C (1843).

spinsters who lived at home. Masters may have simply been convenient suspects; on the other hand, when defamers coupled them with their pregnant servants, they may have been commenting on the moral irresponsibility of masters in general, an irresponsibility which could take the form of repudiation of burdensome servants--as in *Strouds v. Churches*, below, a case where a young servant was sent home to her parents when she became ill, thus forcing the parents to apply for parish relief--as well as of sexual licence.<sup>60</sup>

John Taylor repeated a piece of gossip he had heard about a woman who may have been his fiancée to John Withey: Elizabeth Walter, he said, 'went home with Child some time back but it was not by John Withey but by her Master Mr. Rendall'.<sup>61</sup> Again, there is a sense of the violation of the boundaries of tolerance. The pregnancy would have been acceptable had it led to marriage with John Withey. Impregnation by a master led only to losing one's place. Finally, there is an allegation that suggests that the sexual privileges of masters extended to mistresses. John and Ann Allen took Ann Field to court for saying 'Ann Allen whilst alone in Bed called to one William Steeds a Servant

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<sup>60</sup>*Stroud v. Churches*, D/D/Ca 441 (1834) and D/D/C (1834).

<sup>61</sup>*Walter v. Taylor*, D/D/C (1817).



of her Husband to Come to Bed to her and thru the Bed Cloaths down to receive him'.<sup>62</sup> Ann Allen sought legal redress where Mr. Rendall did not; as a married woman and the wife of a 'master' the contention that she had slept with her husband's servant was both personally demeaning and a blow to his reputation which encompassed the fidelity of his wife.

The unmarried were linked very occasionally with men other than their masters. Female servants were also suspected of having sexual relations with their fellow servants. Mary Hutchinson, a widow, was 'a whore to all her Masters servants'. Mary Blacker 'was with Child by the Bams Man'. In both cases, the accusers were men. Hannah Cook declared that Sarah Penny, a spinster, was a 'bitch of a whore and Farmer Sly's whore...many times'. John Soper called the widowed Jane Buckland a 'barren bitch of a whore, William Syme's whore and the Millers whore'. Despite the sexual reputation of millers immortalised in songs and ballads this was the only time that a miller as such was purloined for defamatory purposes.<sup>63</sup>

Married women, who rarely acted as servants, were mostly exempt from the insults arising out of that

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<sup>62</sup>Allen and Allen v. Field, D/D/Ca 471 (1772) (A.W.).

<sup>63</sup>Hutchinson v. Maynard, D/D/Ca 430 (1766); Blacker v. Anstice, D/D/Ca 433 (1772); Penny v. Cook, D/D/Ca 433 (1772); Buckland v. Soper, D/D/Ca 434 (1774).

occupation, but their legitimate sexual activity was often distinguished from their illicit activities by equally explicit charges. Joshua and Faith Hill called Nicholas Loney's wife 'Bailiff Benet's whore' as well as a bawd: 'she was as great a Bawd as any in London'. John Prenter announced that Ann Symons 'was her first husband's whore for she was with child by him before she was married and that she is the Doctor of Milton's whore and art a whore and every [sic] knows art a whore'. Milton was a hamlet in Kewstoke adjoining Worle, the parish in which Ann Symons and her husband resided. Mary Durnford called after Rebecca Wootton, 'there goes the Malster's whore, she is her Landlord's whore'. James Higgins told Elizabeth Bevan, wife of Francis, 'you whore...go to Mr. Hore' and 'you are common to Mr. Hore and his man'. Mr. Hore was an attorney who saw fit to prosecute Higgins and was more successful than the Bevans in punishing him. His man's reputation was evidently not worth the trouble. Two women, Mary Everdell and Jenny Cox, were named with men who bore the same names as the churchwardens of their respective parishes. Neither man brought a suit, but they may have encouraged the defamed women to do so. One of the men, William Lovell, was also a tithe farmer in the parish of Walton, and it would be interesting to know what, among his activities or personal characteristics, made Ann Andrews select his name. At least one other man named in this way, John Porch of

Glastonbury, bore the name of a local tithe farmer. Catherine Masters, who kept a boarding school with her husband, was the subject of an attack by Nancy Moss, a married shopkeeper: she was a 'nasty stinking slut. Let her recollect the Night of the Thunder when she was caught in bed with Wiggins with her arms round his Neck'. Wiggins, a writer, lodged with the Masterses and was easily identified by the customers to whom Moss retailed her story. In Bath, Fanny Millard and Caroline Taylor touched on every species of disreputable behaviour of which a woman was capable in the course of their violent quarrel. One claimed: 'I have met Wine Merchants coming up Stairs at two o'clock in the Morning, muffled up to the Chin, with Wine'.<sup>64</sup> Few of the men named in these or other libels felt compelled to take direct legal action. Only in complicated causes do the machinations of a Parson Wait come to the surface. Lacking even sufficient occupational information for litigants it is impossible to judge the

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<sup>64</sup>Loney v. Hill and Hill, D/D/Ca 423 (1746); Symons v. Prenter, D/D/Ca 425 (1755). For Kewstoke and Worle, see Collinson, Somerset, 3:593. Wootton v. Durnford, D/D/Ca 472 (1791) (A.W.); Bevan and Bevan v. Higgins, Hore v. Higgins, D/D/Ca 425, 446, 447 (1756); Everdell v. Andrews, D/D/Ca 434 (1775); Cox v. Pitt, D/D/Ca 435 (1779). Names of churchwardens and tithe farmers were gathered from court documents such as penances and citations in tithe causes. Wilcox was named in Rood v. Chamberlain, D/D/Ca 387 (1749). Masters v. Moss, D/D/Ca 439 (1811) and D/D/C (1811); Taylor v. Millard, D/D/Ca 441 (1835) and D/D/C (1835).

relations, personal or otherwise, between a defamed woman and her possibly fictitious lover.

Some women were accused not only of being whores but of being common to a particular group of men. Lack of exclusivity was an exaggerated form of the uncleanness that adultery represented, and the association of illicit sexuality with dirt found its widest expression in these libels. Transgression on this scale had physical, moral and class dimensions: women descended to social depths, caught and spread venereal disease and betrayed their husbands and communities. Mary Wason, a spinster, and Ann, the wife of Thomas Wason, paid 10s. apiece after confessing that they had called Eleanor Burge, a spinster herself, 'a common Whore to the Scroff of the Town and Jack Nooth's whore'.<sup>65</sup> The last decades of the eighteenth century witnessed a series of causes in which soldiers--nameless men with no roots in the community and an unenviable collective reputation for rapaciousness of all kinds--came to assume the same abhorrent role as the 'scroff'. Elizabeth Robinson was a 'soldier's whore' (1775); Mary Ogilvie 'a dragoon's whore' (1794); Elizabeth Smith 'had been a whore to all the soldiers' (1783).<sup>66</sup> Elizabeth

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<sup>65</sup>Burge v. Wason, Wason, D/D/Ca 471 (1773) (A.W.).

<sup>66</sup>Robinson v. Willington, D/D/Ca 471 (1775) (A.W.); Ogilvie v. Nix, D/D/Ca 438 (1794); Smith v. White, D/D/Ca 478 (1783) (A.W.). For examples of ambivalent local reactions to soldiers in the seventeenth century, and some reasons for them, see Quaife, Wanton Wenches, pp. 49-50; 123.

Young accused Hester Saxey of being a 'whore and a nasty dirty bitch of a whore for all the dirty fellows, that \_\_\_\_\_ the streets' (1782).<sup>67</sup> Sarah Hobbs was even more explicit about Sarah Romaine, who, she said, 'was caught in bed with Captain Jones of the North Gloucestershire Militia' (1781).<sup>68</sup> Soldiers were notorious for communicating venereal disease, a fact that Deborah Baily stressed when she defamed Betty Baily in 1761: Betty was a 'pocst arse whore and burnt arse whore and art a whore to the colliers and didst go to the camp to the soldiers and hast had the foul disease'. Deborah's husband Henry added that she was 'a whore to colliers and soldiers and is common to any when she goes to Bath'.<sup>69</sup> Bath was a short walk from Bathampton, the parish where all the Bails resided, but the colliers were close to ten miles away in the Radstock coalfield. This single allusion to colliers may have been part of some familial system of reference, or it may have expressed an attitude shared by the market gardeners and farmers of this and other small agricultural parishes who saw little to choose between soldiers and miners.

What is clear from our small occupational sample is

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<sup>67</sup>Saxey v. Young, D/D/Ca 478 (1782) (A.W.).

<sup>68</sup>Romaine v. Hobbs, D/D/Ca 436 (1781).

<sup>69</sup>Baily v. Baily, Baily, D/D/Ca 427 (1761) and D/D/C (1761).

that the gentry were rarely drawn into defamation litigation, and least of all as plaintiffs.<sup>70</sup> In contrast, parsons and professionals were rarely accused of defaming others, and when they were defamed it was usually by their inferiors. Yeomen and their wives chose their adversaries--or equally were chosen by them--from all classes. Without an understanding of parochial agriculture and landholding patterns it is difficult to locate the yeomen along the occupational spectrum. These divisions at and within the upper end of the social structure suggest a substantially different attitude toward reputation and its defence than that held by the tradesmen and artisans of the county.

While the occupational data collected here go some way toward identifying the courts' clientele, they do not explain why the plebs chose to defend their reputations at

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<sup>70</sup>The three cases in which gentlemen or their wives are listed as plaintiffs are sufficiently unusual to merit some attention, but the scanty documentary evidence that remains for all three provides, at best, the impression that they had uncommon antecedents. One involved two families in the tiny western parish of Exford who appended 'Esquire' to their names: Bartholomew v. Moore, D/D/C (1812). The defendant, John Hartnoll Moore, simultaneously prosecuted the plaintiff's husband, Charles Arch Bartholomew, for assaulting him: Q/SI 433 (Epiphany, 1813). Another brought together Harriet Miller, the wife of a gentleman, and Martha Elizabeth Willment, the wife of a yeoman, both residents of a Taunton suburb: Miller v. Willment, D/C/Ca 451 (1824). In the final cause, Mary, the wife of Edward Barber, Esquire, of Warwickshire took Thomas Porch, Esquire, of Glastonbury to court for telling her husband, 'you have married your whore': Barber v. Porch, D/D/Ca 452 (1832).

Wells while the gentry and others avoided the church courts. Fortunately, four Somerset diarists have left clues to the behaviour of the literate classes. Only one of the diarists, James Woodforde, writes directly about defamation litigation, but all four show a concern with verbal insult, especially in the form of gossip. The literary evidence, then, may broaden our view of honour and its defence from the narrow base of the court records to include those who did not belong to the litigious lower orders.

The diarists who have left records of Somerset life followed professions which brought them into frequent contact with people of every class. Claver Morris, an early eighteenth-century physician who charged his patients according to their ability to pay, owned a substantial amount of land in Somerset and was intimately connected with the episcopal establishment at Wells, where he lived, and with the county political establishment. (His daughter married a future M.P. for the county). James Woodforde and John Skinner were clergymen, but their temperaments and the ways in which they perceived their parishes and duties suggests a longer gap than the years that separate their ministries in Somerset. Martha More joined her sister, Hannah, the Evangelical, in establishing a series of Sunday schools and clubs in the Mendips, a rough mining district, in the late eighteenth century, and kept a diary

of sorts detailing their schemes. The four diaries provide glimpses of a range of insult--how, where and by whom it was committed, under what circumstances it occurred--but it is in their attitude toward verbal abuse that the diarists reveal themselves most clearly.

The eighteenth-century diarists lived comfortably with verbal insult and were often willing to resolve their personal conflicts without resorting to law. Claver Morris may have avoided sexual insults, but his tongue was indeed active among both his peers and his servants. He was not without remorse for this failing, and on his birthday he read to his 'Family' in the 'Government of the Tongue'.<sup>71</sup> Two weeks earlier he had said of a neighbour: 'I told him he lyed and wondered he would come to Church who in all his Actions observ'd so Little the Law of God and Nature...For certain he would go to the Devil hereafter'. Not content with this he observed that the man was a rascal--a favourite word of his--and 'the most worthless Fellow in England that had acquired an Estate'.<sup>72</sup> When dismissing his servant, Charles Cook, who had compromised a female servant, Morris recorded that 'I then said to him You Impudent Raskal do you give me the Lye? Get you out and never come hither anymore'. Cook apparently swore at

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<sup>71</sup>[Morris], Diary, p. 131.

<sup>72</sup>Ibid., p. 130.



Morris, who threatened to have him fined.<sup>73</sup> This invocation of the law against swearing was not peculiar to Morris: the law was read out quarterly in church, and the Rev. John Skinner once threatened an insolent churchwarden with it.<sup>74</sup> There was a legal distinction between swearing and defamation, one no doubt known to Morris and Skinner, but whether all their verbal encounters admitted only of the statutory remedy is unlikely. What is significant is that the act of swearing was a crime in itself, and need have no personal object. Morris could take his servant before a magistrate for swearing without involving his own reputation and emerge from the dispute unharmed by words or by litigation. The ubiquity of magistrates may have deterred those who could ill-afford a fine from damning their betters.

Parson Woodforde was more apt to take things into his own hands. As a student at Oxford he stormed into the shop of his sadler 'where I threshed his apprentice Crozier for making verses on me'. Later, when Woodforde was a rector at Weston in Norfolk, his servant, William Coleman,

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<sup>73</sup>Ibid., p. 123. The Quarter Sessions records of Somerset preserve some examples of the fines and penalties meted out to individuals who swore, but the returns give no indication of the words used and are too intermittent to quantify.

<sup>74</sup>Woodforde read it out on 1 October 1769: Diary, 1:90. Skinner threatened to get a summons against Farmer Keel, a churchwarden, for using the word 'damned' in reference to him: Journal, pp. 113-14.

was cited in the defamation of a fellow servant who had lost her place when she was made pregnant by yet another servant. Woodforde commented that 'Will was in a Peck of troubles about it, tho' nothing'. Woodforde was a latitudinarian in most sexual matters, admitting the mistresses of his wealthy parishioners to church and taking the venereal infections of his servants in stride. A few months after helping Coleman hire a proctor, he baptised the twins of his still unmarried ex-servant in his own home.<sup>75</sup>

Morris was as unself-conscious in his speech as Woodforde was in his acts, but by the end of the eighteenth century social rigidity, in relations and in manners, inhibited those who crossed class boundaries in their professional lives. Social isolation and a consequent fear of the subversive power of gossip plagued the More sisters and John Skinner. Words, now that they were rarely spoken to one's face, assumed a terrible power and seemed capable of undermining the authority of those, like Hannah More and Skinner, whose tenure and position in the community were not secure. Martha More did not shy away from taxing her flock with their disturbing habit of gossip. In her charge to the Shipham Club in 1795 she told the assembled women:

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<sup>75</sup>Woodforde, Journal, 1:15; 291 (this was in 1780); 331; 302.

You may go home when your labour is over and, if you have time, a few verses in your Bible will close a summer's day much better than gossiping out on the hill, at one another's doors, and meddling with each other's concerns. It is far more profitable to get a habit of looking into the Bible, than prying into the secrets of your neighbours.<sup>76</sup>

That same year she elaborated on the theme when she addressed the Cheddar Club:

It grieved us last year to be obliged to dwell so long upon the sad and mischievous vice of gossiping. We had reason to hope, from what we then said, and your improvement in other things, that we might have omitted it at present. There are still too many of you who have not yet discovered that a prating tongue commonly slanders an innocent neighbour. Even unkind truths are often better let alone. We understand that the intolerable gossiping and idle slander at the paper-mill and bake-house, by a few idle women, are sufficient to set a whole village together by the ears. I wish the next time a woman carries her loaf to be baked, she would think what a mercy it is to have a loaf in these times; and it would better become her to find a suitable text of thanksgiving for such a blessing, than to be scheming how she can spread an evil tale about the club, and inventing complaints against the method of payment. A little less prating will give more time for praying, and that will teach you to keep the unity of the Spirit in the bond of peace.<sup>77</sup>

These passages reveal above all the Mores' inability to penetrate the web of customs and habits that protected these communities from incursions such as

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<sup>76</sup> [Marsha More], Mendip Annals: or, A Narrative of the Charitable Labours of Hannah and Martha More in their Neighbourhood. Being the Journal of Martha More, ed. Arthur Roberts, 2nd. ed. (London: Jas. Nisbet & Co., 1859), p. 153. This is hardly a journal, but rather an annual narrative of the More exploits, most useful as a source of letters and charges written by both sisters. The narrative itself is propaganda and lacks the immediacy and intimacy of a private, daily journal.

<sup>77</sup> Ibid., pp. 163-64.

theirs.<sup>78</sup> The women of Shipham and Cheddar may have been unequalled gossips--and the Mores say nothing of male gossip--but their tongues were rarely curbed in the church courts. There are only two defamation causes recorded in our period involving Cheddar, and neither of these causes was intraparochial. Shipham was more litigious, sending seven causes to Wells. Only one of these occurred after 1789, the year the Mores swooped into the Mendips. This may have been a result of the Mores' stern warnings; or again the poverty of the parish as the mining industry declined may have kept potential litigants out of court. Cheddar may have been a hothouse of gossip but the parishioners, with their long traditions of communal grazing and collective cheesemaking, must have had their own methods of control.<sup>79</sup> One suspects that, despite the protestations, it was not the harmony of the community that was the major cause of Martha More's concern. Claver Morris could have a slanging match with his servant and never feel that his reputation was slighted; the More sisters, excluded from the bakehouse and the papermill

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<sup>78</sup>For instance, the Mores could not understand why the women who joined the clubs insisted on setting aside more money for burial than for childbirth.

<sup>79</sup>Defoe described Cheddar as a village of cowkeepers who manured their common to insure prosperity; he was impressed by their system of cheesemaking: Tour, 1:277-8. The economic picture was more complicated by the end of the eighteenth century, and the parish included many poor people (see Collinson).

and, more importantly, from the universe of village relations, feared that they were the subject of all that unregulated talk. Who, after all, had conjured up a club for the women of Cheddar, written its rules and distributed its funds? The More sisters went, Sunday after Sunday, among the 'savages' of the Mendips, scouting souls and preaching resignation, but they knew that their situation was equivocal and their welcome ambivalent.

Gossip was the weapon of the powerless against the intruder, and perhaps more effective where the intruder failed to win the backing of the local establishment. Both John Skinner and the Mores, at least initially, received little support from the pillars of the communities they entered. It has been claimed that the unwelcoming farmers of Mendip (the highest social class resident in the district) consulted a fortune teller to determine whether Hannah More 'was free from the taint of Methodism'.<sup>80</sup> And the squires of Camerton were notoriously uncooperative when it came to the Church, education or charity. The Stephenses and Jarretts would not agree to a tithe composition and granted land for the building of a Nonconformist chapel; in the 1830s, Camerton church was numbered among those that could not accommodate a

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<sup>80</sup>Hunt, Somerset Diocese, p. 231, retails this as fact.

third of the local population.<sup>81</sup>

Skinner lived a stranger in his own parish for thirty years. Such isolation bred suspicion and that suspicion coloured his relations even with his household and family.<sup>82</sup> Skinner instructed his daughter to put out the laundry at a cost of £4 a quarter, explaining that dispensing with a washerwoman 'will cut off one channel of village gossip--the main cause of unsettling one's household'. A housekeeper was dismissed for insolence after all the servants complained of her abusive language. Skinner hailed the New Year in 1830 with the hope that 'my parishioners will restrain their nonsensical tongues the ensuing year--I mean in those matters which do not concern them'; he was convinced that his servants spread reports of his bad relations with his children to the people of Camerton who could then accuse him of failing to

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<sup>81</sup>For Skinner's problems, see Chapter 2, above, and W.J. Wedlake, 'Tithe Disputes at Camerton, Somerset, 1800-1839' in Second North Somerset Miscellany, pp. 32-50. The stability of employment at the Jarretts' colliery allowed the parish to grow tremendously (the colliery paid over £11,000 in dividends between 1830 and 1843) and as in many other coal parishes, the parish church was rapidly outgrown: Down and Warrington, Somerset Coalfield, pp. 37; 113; Kemm, 'Church of England', pp. 65; 183.

<sup>82</sup>Skinner originally trained for the law and was entered at Lincoln's Inn before turning to the Church and, as Wedlake remarks, 'the law to him was a vital part of his religion, and he permitted little or no deviation from it': 'Tithe Disputes at Camerton', p. 32. His litigiousness endeared him to no one, but he felt that the clergy had become so powerless that they were vulnerable to injury, to their property and their reputations, that could only be rectified in court (p. 50).

practise what he preached. That Skinner's parishioners recognised his fear and taunted him with it cannot be doubted. Twice he found a 'vile obscenity' written, as he thought, by the mason's boy and son of the former parish clerk, on his gate and on the church wall.<sup>83</sup> It is this feeling that one's character (and not, of course, only one's sexual reputation) was open to the scrutiny of servants and other members of the lower orders that separates Skinner from both of his eighteenth-century predecessors and probably from the gentry throughout the period who, as class divisions led them to locate themselves outside the social body, were less likely to engage in the sort of face-to-face encounters with their inferiors that led to verbal abuse. Defamation was a poor weapon against those who had no reputation; against those who believed their reputations existed independently of your approval; and against those who thought that a good fame--the sort that helped you hold a job, participate in communal activities and find a suitable spouse--was a peculiarity of the lower orders.

There is one final distinction to be drawn between the defamatory experience of the upper classes and that of the lower orders. In so far as the upper classes were the literate classes, they could write their libelous words rather than shouting them across the road. This could

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<sup>83</sup>Skinner, Journal, pp. 138; 107; 226 and 141; 261.

widen the audience for such sentiments, if they were published; it could also keep them out of the hands of the illiterate. The five unmarried More sisters were regularly subjected to sexual slander in the course of the propaganda wars that surrounded their religious enterprises.<sup>84</sup>

Whatever the personal injury, it did not affect their position among their peers, nor did it diminish the numbers of their supporters. The written libel, the words that could be interpreted as actionable at common law, probably made prosecution for slander more attractive to the upper classes than defamation litigation in the church courts. A defamation cause could easily result in greater embarrassment: penance was still an aural act, susceptible to being witnessed and repeated by the illiterate, the lower orders. Few people had the steely nerve of the Rev. Thomas Wickham, who forced his defamer to confess and perform penance before his assembled congregation.<sup>85</sup>

Solutions short of the law differed from class to class but

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<sup>84</sup>For discussion of the Blagdon controversy and the libels printed see Mary Alden Hopkins, Hannah More and Her Circle (New York: Longmans, Green and Co., 1947), p. 192; M.G. Jones, Hannah More (Cambridge: At the University Press, 1952), chapter VIII. According to one biographer, four of those who wrote against Hannah More were convicted of Libel at King's Bench by 1805: Annette M.B. Meakin, Hannah More. A Biographical Study (London: Smith, Elder & Co., 1911), p. 331. Not surprisingly, Hannah More brought her civil suits for libel in the common law courts.

<sup>85</sup>Wickham v. Isaac, D/D/Ca 428 (1763).



undoubtedly existed: when sexual slander became the subject of litigation the plebs once again diverged from the patricians, choosing the church courts over the common law courts, the retrieval of reputation over the collection of damages.

#### IV. Witnesses

Not every defamatory incident resulted in a cause in the church courts: much depended on the circumstances under which words were uttered and essential to this consideration were the number and character of witnesses present. The composition of the audience--male or female, young or old, strange or familiar--might determine the degree of injury and even the necessity of going to law. Lack of privacy inside the home and the acceptability of acting on curiosity outside it must have guaranteed witnesses for many verbal encounters that never found their way into the courts; in others, a superfluity of auditors enabled litigants to choose the witnesses they thought might best carry their cause. Neighbours were quick to cross thresholds and servants were a fixture in the households of even the relatively poor. Mary Moxey, the wife of a Moorlinch labourer, explained her presence at the home of Isabella Stroud's parents by saying she 'went in as a Neighbour, and as she very frequently did and does, without any request'. Elizabeth Dyer, the wife of a

cordwainer, was also present when Robert Churches defamed Stroud; she had come over to borrow a washing pan. Disturbances attracted crowds in rural parishes and in towns. In Frome, 'a great many of...Miss Andrew's Neighbours...came out to their Doors as people are apt to do on hearing a Noise' when James Pobjay defamed her. In Glastonbury, Sarah Bond, a witness to Mary Whitcombe's defamation, was buying potatoes from Martha Chasey at her house in North Load Street when she heard 'a great Noise and ran across the Road to see what the occasion of it was'.<sup>86</sup>

Our purpose in this final section is to assemble the biographical data recorded in the depositions of witnesses and to use it to plot regional and chronological variations in attitudes towards defamation litigation. The desirability of certain witnesses at different times and places--whether male or female, married or unmarried, literate or illiterate, old neighbours or recent acquaintances--points to the limits set on litigation and the social circumstances that made legal action obligatory. These circumstances and limits undoubtedly changed, and their progress is best reflected in the relations between

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<sup>86</sup>Stroud v. Churches, D/D/Ca 441 (1834) and D/D/C (1834); Andrews v. Pobjay, D/D/Ca 436, 397 (1782) and D/D/C (1782); Whitcombe v. Ellis, D/D/Ca 451 (1824) and D/D/C (1824). The depositions in causes for incontinence abound with descriptions of people wandering into each other's houses to borrow, buy or report for work.

litigants and the witnesses they called. In the growing tendency to choose younger, socially inferior and dependent witnesses we may discern the submergence of the traditional conciliatory goal of defamation litigation beneath a new desire to win suits, a shift that signals a profound alteration in the way the defence of honour was viewed by the regular clients of the church courts.

Two witnesses were needed to prove defamation, but the witnesses could, and did, testify to defamation committed at different times.<sup>87</sup> Witnesses could be summoned in the same way as litigants, first by a citation and, if that failed, by a compulsory that was nailed to their dwelling house door; or they could make a verbal agreement to appear with the party that required their evidence.<sup>88</sup> If the expences, based on distance and rank--which dictated the mode of travel and the value of time lost--were not agreed between the witness and the party producent, the witness could petition the judge for these

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<sup>87</sup>Burn, Ecclesiastical Law, 8th ed. (1824), 2:135.

<sup>88</sup>The fear that defendants might interfere with witnesses whose names were revealed ahead of time in court was not ungrounded and proctors were not obliged to name witnesses unless a judge decreed it expedient: Law, Forms of Ecclesiastical Law, 2nd ed., pp. 207-09. See Board v. Hill, D/D/C (1843). In the bill of costs the proctor writes that a witness was absent, 'having been forcibly prevented by the Defendants' friends from attending'. Many scraps of paper survive from the nineteenth century listing witnesses for the benefit of the adverse proctor, but these lists were generally submitted at the last minute and seem to have been deliberately misleading.

charges. Failure to pay expences excused the witness from deposing and could lead to the excommunication of the party producent.<sup>89</sup> These preliminaries settled, the witness was sworn and was later examined in private by the deputy registrar on the material in the libel or allegation in question. If necessary, the adverse party could submit interrogatories designed, as Ritchie has written, 'to trap the witness into an admission which would prove useful to the adverse party, or at least establish that he had knowledge of the matters he deposed of'.<sup>90</sup> Proctors could attempt to bar witnesses from deposing, or they could take exception to their depositions on the grounds that they were intimate friends of the party producent, enemies of the adversary, partial, vacillating, interested, criminous, badly spoken of, paupers or destitute, servants or dependants of the producent, or undependable. In addition, depositions that were found to be differing, opposed or contradictory could destroy a cause. As will be seen, exceptions that included criminal charges such as adultery, bigamy or prostitution became popular in the

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<sup>89</sup>Law, Forms of Ecclesiastical Law, 2nd ed., pp. 212-3.

<sup>90</sup>Ritchie, Ecclesiastical Courts of York, p. 140. Law asserts that if the proctor neglected to give in interrogatories, the examiner was to make them up: Forms of Ecclesiastical Law, 2nd ed., p. 217. Interrogatories seem to have followed a standard (and unwritten) form in the beginning of our period, but were later replaced by lengthy, detailed questions specific not only to the crime but to the witness.

nineteenth century. In theory, those who brought such charges had to show they were able to pay costs if they failed in proof and the witness chose to prosecute them for defamation.<sup>91</sup> Finally, witnesses could be excommunicated and even signified to Chancery for failing to appear at any stage in their examination. At least nine witnesses suffered this fate between 1733 and 1739, and a further twelve witnesses were excommunicated between 1740 and 1779. Only four are known to have sought absolution. As litigants became more careful in choosing reliable witnesses, contumacy ceased to be a problem until the law changed. Six witnesses were signified under the new proceeding in the 1830s, five of them from outside Bath. At least four of them sought absolution and eventually testified. Several unwilling witnesses escaped punishment when causes were settled or abandoned, or when the plaintiff was able to prove the libel with other, more willing, witnesses.

Depositions and the answers to some interrogatories are available for 134 witnesses. The texts of these documents will be scrutinised more carefully in the following chapters, but at this juncture we will address the information provided as a matter of course at the head

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<sup>91</sup>On exceptions, see Law, Forms of Ecclesiastical Law, 2nd ed., pp. 255-7; 263-4; and Floyer, Proctor's Practice, p. 139.

of each deposition. This usually included sex, women's marital status, age, occupation (or husband's occupation), place of birth, present residence and time resident there. Literacy, or at least the ability to sign one's name, was tested when the witnesses were called upon to affix their signatures to depositions after they had been read over by the examiner. This material can in some cases be supplemented by similar biographical information in the documents themselves. Witnesses were routinely questioned about their relations to the parties, particularly whether they were servants or kin to, and thus dependent on, the party producent.<sup>92</sup> The time, too, that one or both parties had been known to the deponent was often touched upon while establishing malicious intent or the good reputation of the plaintiff.<sup>93</sup> From this material we can construct a composite picture of the witnesses not unlike the one we

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<sup>92</sup>Servants and kin were not barred from deposing, because you could maintain or subsist a witness but could not offer any reward for their testimony: Floyer, Proctor's Practice, p. 138.

<sup>93</sup>Houlbrooke has pointed out that judges had to concern themselves with the state of mind of the defendant and the health of his soul, as well as the plaintiff's reputation, when adjudicating defamation causes. Houlbrooke cites Lyndwood as saying that judges were lenient with drunks and those perpetrating jests; words spoken in the heat of anger might also be more easily forgiven: Church Courts and the People, pp. 81-82. Estimation of the time witnesses had known parties are probably not accurate enough to be quantified, and are only of interest when analysing individual causes. Character references, too, could be perfunctory, mere repetitions of the formula used in every defamation libel.

have already drawn for the litigants in the Somerset church courts.

The witnesses for whom biographical detail survives may be divided into three groups. The first includes the forty people who deposed in causes between 1733 and 1799. Though there were causes from the environs of Bath in this period, no causes originating in the city or its suburbs have left depositions before 1800. The second group comprises fifty witnesses to causes heard between 1800 and 1851 excluding those from Bath. The Bath causes, which have left forty-four depositions from the period between 1800 and 1851, make up a third category. The data for each group is presented in the accompanying tables and requires little elaboration.

These three groups have been subdivided by sex in order to understand the salience of gender in some categories and because the data provided for men and women were not identical. The predominance of male witnesses (60% of a total of 134) suggests that men may have had attributes that made them attractive and convincing witnesses and also that defamatory words spoken in the presence of men were more likely to lead to litigation than those spoken before women. Higher literacy (or at least the ability to sign their own names) may have enhanced the value of male witnesses. Only in nineteenth-century Bath did female witnesses sign their depositions in large

TABLE VF  
WITNESSES, 1733-1799

		Male (N=23)		Female (N=17)		Total (N=40)	
Literacy	Able to sign name	15	(65%)	7	(41%)	22	(55%)
Place of Birth	Outside Somerset	0		2	(12%)	2	(5%)
	Outside R*	4	(17%)	5	(29%)	9	(23%)
	Born R, returned after absence	2	(9%)	0		2	(5%)
	Always lived R	8	(35%)	3	(18%)	11	(28%)
	?	9	(39%)	7	(41%)	16	(40%)
Duration of Residence	Life	8	(35%)	3	(18%)	11	(28%)
	≥ 20 years	2		1		3	
	≥ 10 years	1		1		2	
	≥ 5 years	1		2		3	
	> 1 year	0		3		3	
	1 year or less	0		0		0	
	Moved within year	0		0		0	
	?	11	(48%)	7	(41%)	18	(45%)
Marital Status	Married	2	(9%)	9	(53%)	11	(28%)
	Widowed	0		1	(6%)	1	(3%)
	Single	0		7	(41%)	7	(18%)
	?	21	(91%)	0		21	(53%)
Age	Oldest	70		49			
	Youngest	18		16			
	Median	37		27		29	
	Mean	38.9		27.1		33.9	
Relations	Related to one or both parties	0		5	(29%)	5	(13%)
	Related to other witnesses	3	(13%)	3	(18%)	6	(15%)
	Servants or dependants of parties	6	(26%)	3	(18%)	9	(23%)
Occupations	Gentry	0		0		0	
	Farmers	2	(9%)	0		2	(5%)
	Prof./official	0		0		0	
	Tradesmen	0		1	(6%)	1	(3%)
	Craftsmen	5	(22%)	2	(12%)	7	(18%)
	Labourers/servants	6	(26%)	2	(12%)	8	(20%)
	?	10	(43%)	12	(71%)	22	(55%)

\*R is parish of residence at time of deposition.



TABLE VG  
WITNESSES, 1800-1851 (Excluding Bath)

		Male (N=34)		Female (N=16)		Total (N=50)	
Literacy	Able to sign name	26	(76%)	7	(44%)	33	(66%)
Place of Birth	Outside Somerset	5	(15%)	2	(13%)	7	(14%)
	Outside R	9	(26%)	10	(63%)	19	(38%)
	Born R, returned after absence	5	(15%)	2	(13%)	7	(14%)
	Always lived R	15	(44%)	2	(13%)	17	(34%)
	?	0		0		0	
Duration of Residence*	Life	16	(48%)	2	(13%)	18	(37%)
	≥ 20 years	0		1		1	
	≥ 10 years	5		3		8	
	≥ 5 years	1		4		5	
	> 1 year	8		4		12	
	1 year or less	3		2		5	
	Moved within year	4		2		6	
	?	1		0		1	
Marital Status	Married	3	(9%)	7	(44%)	10	(20%)
	Widowed	0		0		0	
	Single	4	(12%)	9	(56%)	13	(26%)
	?	27	(79%)	0		27	(54%)
Age	Oldest	59		58			
	Youngest	17		14			
	Median	23		23		23	
	Mean	28.3		26.9		27.8	
Relations	Related to one or both parties	3	(9%)	7	(44%)	10	(20%)
	Related to other witnesses	1	(3%)	1	(6%)	2	(4%)
	Servants or dependants of parties	4	(12%)	2	(13%)	6	(12%)
Occupations	Gentry	3		1		4	(8%)
	Farmers	5		1		6	(12%)
	Prof./official	3		0		3	(6%)
	Tradesmen	3		2		5	(10%)
	Craftsmen	13		2		15	(30%)
	Labourers/servants	6		6		12	(24%)
	?	1		4		5	(10%)

\*Percentages are based on N=49, excluding the one unknown length of residence.

TABLE VH  
BATH WITNESSES, 1800-1851

		Male (N=23)		Female (N=21)		Total (N=44)	
Literacy	Able to sign name	18	(78%)	18	(76%)	36	(81%)
Place of Birth	Outside Somerset	11	(48%)	11	(52%)	22	(50%)
	Outside Bath	3	(13%)	3	(14%)	6	(14%)
	Born in Bath	9	(39%)	6	(29%)	15	(34%)
	?	0		1	(5%)	1	(2%)
Duration of Residence	Life	4	(17%)	2	(10%)	6	(14%)
	≥20 years	1		3		4	
	≥10 years	5		3		8	
	≥5 years	5		1		6	
	> 1 year	3		12		15	
	1 year or less	4		0		4	
	Moved in Bath within year	3		2		5	
	?	1		0		1	
Marital Status	Married	2	(9%)	9	(43%)	11	(25%)
	Widowed	0		3	(14%)	3	(7%)
	Single	6	(26%)	9	(43%)	15	(34%)
	?	15	(65%)	0		15	(34%)
Age	Oldest	63		53			
	Youngest	10		20			
	Median	29		32*		30.5	
	Mean	30.4		34		32	
Relations	Related to one or both parties	2	(9%)	4	(19%)	6	(17%)
	Related to other witnesses	1	(4%)	3	(14%)	4	(9%)
	Servants or dependants of parties	7	(30%)	3	(14%)	10	(23%)
Occupations	Gentry	1		0		1	(2%)
	Farmers	0		0		0	
	Prof./official	3		0		3	(7%)
	Tradesmen	2		4		6	(14%)
	Craftsmen	8		4		12	(27%)
	Labourers/servants	9		4		13	(30%)
	?	0		9		9	(20%)

\*Two female witnesses failed to give their ages, so mean and median are based on nineteen ages.

numbers; yet a rate of 86% based on a sample of twenty-one women is hardly significant. It does, however, suggest that the literate witness was in great demand, regardless of sex, and that women drawn to or raised in the city had greater educational opportunities than their sisters who remained in the hinterland.<sup>94</sup> Men and women were called as witnesses in nearly equal numbers in Bath (23 men, 21 women) and the ability to sign their names was distributed almost equally between the sexes (78% men, 86% women).

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<sup>94</sup>Though most of the older educational establishments in Bath, including the charity schools, catered for boys, the Blue School took fifty girls as well as fifty boys. The girls, however, were taught knitting, sewing and housewifery rather than reading and writing. The Lancasterian school probably included girls among its more than 500 pupils, and the Girls' Free School certainly did. The Union Blue-Coat School clothed its children and taught them 'the principles of religion and morality' and how to earn a decent living: Egan, Walks Through Bath, pp. 101; 103-4; 161-2; 172; 199; 212. In the nineteenth century educational opportunities for girls probably improved with the opening of a Free School on the Lancaster system in 1810 and the building of the 'New Bath District National School' in 1816. Sunday Schools and schools of industry abounded, though it is difficult to assess their impact on literacy, and particularly female literacy: Rowland Mainwaring, Annals of Bath, from the Year 1800 to the Passing of the new municipal act (Bath: Mary Meyler and Son, 1838), pp. 94-96; 167.

The literacy gap between men and women was probably closing in the nineteenth century, particularly in towns and other places where women acted mainly as domestic servants to the gentry. At Newton St. Loe, in the 1760s, 41% of grooms and 26% of brides signed the marriage register. In the 1840s, three decades after a school had been built, the proportions were 89% and 84%. In the intervening years, the parish had become the domain of the Gore Langton family, local coal mining had ceased and the population was increasingly composed of family servants, many of them imported from outside: Davis, 'Newton St. Loe', p. 91.

This points to one of several differences between Bath and the rest of the county in the nature of defamation and its prosecution and indicates that the conditions for litigation in Bath were not as rigid, nor as gender-defined, as they were outside the city.

Place of birth and duration of residence are at best approximate. The courts were more attentive to these facts in later years, but any judgement of time was bound to be subjective and susceptible to a variety of interpretations. Half the witnesses in Bath causes were born outside Somerset: Bath, located in the northeast corner of the county, operated as a magnet for adjoining Wiltshire (9 witnesses) and Gloucestershire (1 witness), but its attractions spread as far as London (5 witnesses), Stratford-upon-Avon, Cornwall, Shropshire, Monmouth, Surrey, Chester and Portsmouth (1 witness each). The nine provincial witnesses born outside Somerset were all from adjacent counties: Wiltshire (3), Devon (2) and Gloucestershire (4; 3 from Bristol).<sup>95</sup> Female witnesses, perhaps because of marriage patterns that favoured the removal of a wife to her husband's parish, appear to have been far more mobile than their male counterparts. The

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<sup>95</sup>The provincial figures (10% of the 90 witnesses who deposed between 1733 and 1850 were born outside the county) are much closer to the statistics on place of birth in the 1851 census than the Bath figures. In 1851, 80% of the population of Somerset was native born.

distances travelled, which may in many cases be determined, at least for the most recent move, could be quite short--across the border from one parish to the next--but it is women who are doing much of the moving. The difference between those who returned to the parish of their birth, and those who never left, is exaggerated in the tables. The latter category includes many who described themselves as living 'chiefly', 'mostly', or for 'the greater part' in the parish they were born in. Robert Talbot, a seventeen-year-old stonecutter, named Street as the parish 'where he was born and has lived the greater part of his life'; and then revealed in his deposition that 'he resided and worked as a stone cutter in...Kington Manfield [Keinton Mandeville] for Mr. Robert Dyke from the beginning of the year 1818 to the month of September following or thereabouts'.<sup>96</sup> Thus, the 'always' of duration of residence was at best relative. Witnesses who deposed in the eighteenth century, especially older witnesses, described lengths of time in round numbers. This and other forms of imprecision make the accurate calculation of length of residence impossible. What can be said is that somewhere between 28% and 37% of the witnesses outside Bath lived continuously enough in the parish of their birth to feel that they were permanent residents, that a few more

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<sup>96</sup>Palmer v. Gibbons, D/D/C (1818).

returned to these parishes after a longer period of absence, and that about two-thirds of the witnesses had left their birthplaces without so far returning. In Bath, 34% of the witnesses claimed the city as their birthplace, but only 14% said that they had lived there without interruption. This last figure is definitely on the low side, because moves within the city--which were very frequent, five of the witnesses having changed residence within the past twelve months--obscured the overall duration of residence in Bath. The gender difference is maintained in Bath, with fewer women staying in one place than men.

Investigations of marital status are hampered by the fact that court personnel never noted the status of male witnesses. A small number of men provided information in their depositions which made it clear whether or not they were currently married: widowers are impossible to identify. Women, on the other hand, were always assigned a marital status. Widows may have been mixed in with spinsters under the rubric of singlewomen, but they were separately designated often enough to insure that this was not an habitual error on the part of the courts. Though male defamers and male witnesses participated in suits in equal proportions (59% of all defamers, 60% of all witnesses) the visibility of wives as defamers and their victims is not paralleled among female witnesses. Wives, who represented

60% of the plaintiffs and 28% of the defendants, accounted for only 53% of the female witnesses before 1800, and 44% (43% in Bath) thereafter. Nor was it widows who replaced them: one widow deposed before 1800 and three were examined in Bath in the nineteenth century. It was spinsters who came forward in uncharacteristic droves. Spinsters were rarely prosecuted for defamation (5% of defendants) and the citation of their adversaries accounted for only a fifth of all causes. Yet spinsters deposed in equal numbers with married women in Bath, they accounted for 41% of the female witnesses prior to 1800, and they outnumbered married women witnesses nine to seven outside Bath in the nineteenth century. While their marital status may have precluded litigation in many cases, it did not impinge on their desirability as witnesses. Nine of the spinsters who deposed were daughters to one of the parties; a tenth was a niece. Five more women were employed as servants by either the plaintiff or the defendant and another was the servant of a witness.<sup>97</sup> The bonds of dependence were increasingly important to the selection of good witnesses, and spinsters were rarely

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<sup>97</sup> Daughters: Eliza Webb (aged 21); Mary Ann Dorney (18); Elizabeth Vowles (15); Elizabeth Whittle (15); Ellen Ellis (15); Eliza Ellis (14); Ann Fry (16); Grace Clarke (21); and Eleanor Nowell (17). The niece was Ann Harvey (23). Servants: Eliza Sage (16) and Elizabeth Rendall (22), both of whom worked in a public house; Jane Eyles (24), a servant to the witnesses; Mary Godfrey (23); Hannah Nash (20); and Mary Hodes (14).

allowed the luxury of independence.

The employment of younger witnesses was part of the same pattern. The average age of witnesses outside Bath dropped in the nineteenth century; despite the higher average age among Bath witnesses, six witnesses under the age of eighteen were called into court from that city. The eighteenth-century reverence for memory, typified by the summoning of the oldest male inhabitant to testify in tithe causes, was overtaken both by a growing reliance on literacy and changing attitudes toward defamation litigation. Younger witnesses were likely to be literate or dependent (as children or servants) or both. There is some evidence that, just as defamatory words spoken before men were more likely to form the basis of a suit, the same words spoken before children could be more easily ignored or their source prosecuted only with great difficulty. The admission of a relative as an evidence, except a spouse, was prohibited neither by law nor by court custom, yet before 1800 children were called in only two causes. Nor did the law bar very young witnesses from testifying but of the two children who deposed before 1800, both daughters, only one was under twenty-one years of age.<sup>98</sup> Minor witnesses examined in the nineteenth century did not go unchallenged by proctors and were usually questioned closely

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<sup>98</sup>Ann Fry deposed in 1786: *Burrow v. Sheppard*, D/D/Ca 397 (1786). Grace Clarke deposed in *Clarke v. Sealy*, D/D/Ca 385 B (1744) (A.W.) and D/D/C (1744).



about their age and their ability to depose freely.

William Davis, the thirteen-year-old servant of Sarah Walsh, was asked whether he knew how old he was, where he was born and christened, and whether his testimony had been recently disallowed by the Mayor of Bath or by the Court of Requests, presumably on the grounds of nonage. Davis answered these questions in great detail, citing his mother as his source for all the earlier information; he also observed that he remembered the defamatory incident 'in consequence of his Mistress and Miss Squires (her niece) writing down the same immediately as they came into the House and telling him to remember all that passed'. The literate Davis could no doubt consult this paper to refresh his memory, and in a later allegation the defence accused him of saying he was 'bound to swear whatever his Mistress wished him to do'.<sup>99</sup> George Holder, aged 13, summoned to depose on behalf of his stepmother's sister, Susanna Biffin, with whom he lived and worked, was asked 'if he knows the nature of an Oath, and if he has ever taken an oath before this occasion--and let him be asked if he has not on some and what occasion been taken before the magistrates at Bath...and whether the Magistrates did not refuse to take his testimony, and if so for what reason'. When he and his seventeen-year-old fellow witness Robert

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<sup>99</sup>Squire v. Westropp and Walsh v. Westropp, D/D/Ca 479 (1810) and D/D/C (1810).

Bird were asked if Henry Baines, their master and Susanna Biffin's brother-in-law, 'has offered them or promised them any or what sum of money to give their testimony in this suit...and whether he has promised them anything else and what in particular--and whether he has instructed them what to say upon their examination in this suit', they issued the same denial, adding only that Mr. Baines had told them to 'speak the truth'.<sup>100</sup>

Where the ties of friendship or neighbourliness had sufficed to procure reliable witnesses in the eighteenth century, this was less the case in the nineteenth century. Children and servants, bound by the ties of kinship or dependence, were vulnerable to instruction and coercion, and were frequently preferred even when adult witnesses were available.<sup>101</sup> This suggests three points. First,

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<sup>100</sup>Biffin v. Lawley, D/D/Ca 441 (1834) and D/D/C (1834). Children could also be dismayingly frank. Fifteen-year-old Mary Whittle explained that 'her Father told her she was to go to Wells and tell what James West...called her Mother, and her Father brought her to the Court'; he did not instruct her 'save that her Father told her to be careful in giving her evidence and to be correct'. She then went on to admit that her father had been fined by the magistrates for assaulting James West, and that her mother had called him a rogue two or three times in the course of their defamatory exchange. This last fact had been denied by her fellow witness, a middle-aged butcher, who the defence accused of being absent during the dispute and obliging Mrs. Whittle by participating in her vengeful suit: Whittle v. West, D/D/Ca 452 (1831) and D/D/C (1831).

<sup>101</sup>In the three causes discussed above, an older female servant, several adults in the street and in neighbouring shops, and five grown men were also present.

that litigants were more concerned with winning their suits. Second, that people were prosecuting in situations that had been deemed unworthy of litigation previously. And third, that in the nineteenth century, particularly in a city like Bath, the quashing of idle insults became more necessary and the discovery of reliable witnesses more difficult.<sup>102</sup>

The figures compiled under the heading 'relations' do not make this entirely clear. Many witnesses, whether they mentioned it or not, were neighbours of one or both parties and had overheard the defamatory words in this

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<sup>102</sup>George Heale, a stockingmaker of Wells, was dismissed with costs after Sarah Ellen Harris, a spinster, failed to persuade William White and Emma Willcox to testify on her behalf. The costs were heavily taxed (from £4 2s.4d. to £1 10s.0d.) because Harris's proctor alleged that the suit had been 'properly commenced but subsequently finding that one of the witnesses failed in her recollection of the defamatory words' he had been forced to abandon proceedings. The bill of costs porrected by Heale's proctor describes the steps that led to dismissal: 'Calling on you [Heale] relative to Harris. Attending Mr Hamblyn Mr Young Mrs Willcox and others hereon but it appeared you did not call her a whore and particularly Mrs Willcox stated that Sarah Harris had asked her to come forward but she told her she could not swear to any words of defamation. Attending Mr Phelps [plaintiff's proctor] there on--When it seemed that Mrs Willcox was one of his witnesses and it did not seem therefore that she could support her libel'. Harris v. Heale, D/D/Ca 441 (1834) and D/D/C (1834). Plaintiffs' proctors seem to have interviewed their clients and witnesses when possible. Elizabeth Hinton's proctor charged in his costs for 'Attending Mr. Hinton and his witnesses and examining them to ascertain if they could prove Libel'. Though Samuel Hinton was not listed among the litigants, he was clearly propelling the suit towards its successful conclusion: Hinton v. Pearce, D/D/Ca 452 (1831) and D/D/C (1831). If proctors were in the habit of using preliminary questioning of possible witnesses to ascertain their clients' chances, we may better understand the popularity of confessions and the bases for at least some settlement.

capacity. Then, from the tables, it appears that approximately a third of each group of witnesses fell into the category of kin or dependants. What the numbers mask is the composition of each group. The servants and dependants of the eighteenth century include a lodger and several men who were employed occasionally to perform specific chores, such as cutting a hedge or fetching a parcel. Many of these men were neighbours, and identified themselves more readily as friends and neighbours than as employees. The next group (1800-1850) includes a solicitor and a lodger, but also those who more closely fit the traditional description of a servant. The Bath witnesses include five male servants (some of these were apprentices; one was also a relative of the plaintiff) and three female servants. Women, perhaps because they spent more time among their kin, were far more likely to be related to a plaintiff or a defendant than were men. The proportions of dependants may have been the same among eighteenth-century county witnesses and nineteenth-century Bath witnesses (23%), but the ways in which these witnesses were obligated to the parties that summoned them were very different.

The concentration of servants is what most distinguishes the occupational profile of witnesses from that of litigants. Once again, wives and daughters about whom too little is known have been catalogued according to the occupations of their husbands and fathers, but a larger

proportion of women, especially in Bath, identified their work in their depositions.<sup>103</sup> Witnesses are grouped lower on the occupational scale than litigants: craftsmen and labourers and their wives and servants. Before 1800, insofar as we can identify occupations, this group was made up of men who worked in the cloth trade and in agriculture. The nineteenth-century witnesses, outside Bath, resemble the litigants for whom they deposed: the food and building trades, the agricultural sector and the rare gentleman or professional are represented. The occupational profile of Bath witnesses, unlike Bath litigants, favoured servants and services. Three chairmen, three policemen, apprentices to luxury trades, a housekeeper and a landlady immediately distinguish these as residents of the city rather than of the countryside.<sup>104</sup>

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<sup>103</sup>Women's work does not figure in defamatory words but it could, as when one woman told another: 'I get my living with my hands and thou gettest thine with thy taile'. Quoted in Riley, 'Nottingham Archdeaconry, 1590-1610', p. 218.

<sup>104</sup>Before 1800 this group was made up of two yeomen, a clothworker, a man who worked in a dyehouse, a yarnwasher, two shoemakers, a scribler, two husbandmen, two more men who probably did farm work (described as labourers) and a fisherman. The five women were the wife of a cooper, the wife of a publican, the daughter of a tanner and two servants. The nineteenth-century witnesses outside Bath were: three Gentlemen, a Captain in His Majesty's Royal Marines, a solicitor, a surgeon and apothecary, a farmer, two yeomen, a butcher, a baker, the son of a Wiltshire innkeeper, a young man who described himself as 'baker and chandler' and worked for his father, a baker, a tinman and brazier, a plumber and glazier, a stonecutter, a painter, a carpenter, a cooper, a mason who

Does this occupational data force us to modify our evaluation of the status of litigants? The small and arbitrary sample of litigant occupations could easily obscure a different picture, one that, like the witness data, leaned more heavily toward the lower orders. There are at least two reasons why I do not think this is the case. First, the trend we have already noted towards calling witnesses of a dependent status meant that servants and employees played a disproportionate role as witnesses. Second, from the causes for which the occupation of litigants and witnesses is known, we can see that litigants almost always chose witnesses of an equal or lower social rank than themselves. These choices were not always

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worked for his father, a tailor, two cordwainers, a shoemaker, a feltmonger, two labourers who worked at inns (one an ostler), two men who helped their fathers farm, a farmservant, an agricultural day labourer and two undifferentiated labourers. The women included a Gentleman's wife, a farmer's wife, a baker's daughter, two cordwainers' wives, three labourers' wives and three servants, two of whom worked in a pub.

The Gentleman from Bath was a ten-year-old schoolboy who was living with a family other than his own, and it is not clear what either his real or surrogate father did. He was joined by two butchers who kept market stalls (a man and a woman), a grocer and chairman (and his wife, who helped in the grocery), a landlady married to a pawnbroker (who also helped in the shop), the daughter of a Bristol merchant, three tailors, two shoemakers, a cordwainer, a builder, a painter and glazier, an ironfounder, the wife of a carpenter, the wife of a herald painter, the wife of a bootmaker, a washerwoman married to a cordwainer, a housekeeper, two female servants, a chairman, a chairman and gardener, two trunkmakers' apprentices (one was related to his master), two fishmongers' apprentices, a porter and horsekeeper, an agricultural labourer, a male servant and three policemen.

dictated by circumstances, nor did they necessarily reflect the social segregation of neighbourhoods or of leisure activities. Witnesses to incidents in pubs were almost invariably young labouring men, despite the fact that men of higher social class frequented these same public houses.<sup>105</sup> Lodging houses, too, from which so many Bath witnesses were summoned, may have been socially heterogeneous.<sup>106</sup> Sarah Andrews, the woman on the brink of marrying a Gentleman Clothier, called four related witnesses whose only identifiable occupation was shoemaking. Mary Stevens, when defamed by a friend's servant, chose her gardener and the child she was raising in her home as witnesses. Sarah Fisher, who kept a stall at Bath fish market, brought her two apprentices into court and Susann Biffin, who was also defamed before a number of people, many of whom were adults, relied on the evidence of the two young boys who worked with her in her brother-in-law's shop to vindicate her. In one of the rare cases in which gentry witnesses deposed, they appeared on behalf of

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<sup>105</sup>See for instance *Toft v. Currell*, D/D/Ca 452 (1829) and D/D/C (1829); *Viner v. Clack*, D/D/Ca 454 (1836) and D/D/C (1836); *Andrews v. Adams*, D/D/Ca 452, 441 (1832) and D/D/C (1832).

<sup>106</sup>From what I can determine from evidence in defamation causes revolving around lodging houses in Bath, the vertical stratification one finds in Paris is absent. Because people probably chose witnesses whom they considered reliable and with whom they had an affinity, evidence tends to reinforce all the factors of homogeneity, such as religion or place of origin.

the woman who kept the school where their children boarded, and indeed seem to have done much to initiate the suit.<sup>107</sup> We should not be surprised, then, to find that witnesses in the aggregate occupied the social ladder in a somewhat different way than did litigants. There was certainly overlap, but that overlap diminished as the eighteenth century drew to a close and as urban living redefined honour and its defence.

#### V. Conclusion

We have demonstrated the flexibility and responsiveness of defamation litigation, factors which no doubt accounted for its increasing share in court business in our period. Having long before been transformed from office to instance litigation, it underwent further changes--changes that accorded with the needs of litigants--that enabled most defamation causes to be treated summarily and which moved penance from the fully public arena of the parish church to the vestry and finally to Wells Court itself where the circle of auditors was

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<sup>107</sup>Andrews v. Pobjay, D/D/Ca 436, 397 (1782) and D/D/C (1782). This family included at least a father, his daughter and her husband, and the husband's married sister. They lived either in the same house or next door to each other. Stevens v. Leturge, D/D/Ca 452 (1831) and D/D/C (1831); Fisher v. Tozer, D/D/Ca 451 (1828) and D/D/C (1828); Biffin v. Lawley, D/D/Ca 441 (1834) and D/D/C (1834); Masters v. Moss, D/D/Ca 479 (1811) and D/D/C (1811).



necessarily more limited. At the same time, sufficient room was left for the resolution of conflicts, short of legal conquest, to satisfy the traditional clients of the courts; and the interpretation of law and legal practise remained broad enough at Wells to accommodate popular definitions of defamation and defamatory language. As long as these conditions held, the courts continued to attract clients seeking a traditional but by no means ossified form of defence for their reputations; a form of defence that remained valid even as reputation itself was being redefined.

These clients, both plaintiffs and defendants, are readily identified by their gender, place of residence and class. The typical plaintiff in a defamation suit was a married woman, a town dweller and a member of the ranks of crafts- and tradespeople that populated the county's market towns. Her opponent was likely to be a man of similar social standing and a resident of the same parish. As time went on, these outlines sharpened. After the 1780s, all plaintiffs were women and an increasing proportion were married. As fewer and fewer inhabitants of small villages appeared at Wells they were replaced by the residents of the large and growing market towns. Upper class litigants were few and far between; they preferred to take their grievances to the common law courts in the form of libel suits or by swearing the peace against their adversaries.

At the same time, the insults defamers used, or at least those that were recorded in libels, lost much of their variety: insults against men (aside from the perennial cuckold) dropped from the vocabulary; the single epithet 'whore' came to replace lengthy and lyrical abuse.

We have attributed these changes in the identity of litigants and in the vocabulary they used to a redefinition of reputation urged, on one side, by court personnel and slowly adopted, on the other, by the courts' clientele. Registrars, in determining which causes would reach court; judges, in redefining actionable language and in granting dismissals, taxing costs, rejecting settlements or accepting informal apologies and assigning particular forms of penance; and proctors, in writing libels and interrogatories, could impose their view of reputation on clients. We have seen this most clearly in the way court officials discouraged male plaintiffs. The values they enforced were those of a professional elite that had used the designation 'gentleman' from the eighteenth century; a class that encompassed the proctors themselves as well as their kinsmen in the diocesan administration, the church and the common-law establishment; men whose names were more likely to come up in connection with duels and libel suits than with defamation causes.

Court personnel were not always successful in their efforts to act as agents of social change, and while they

may have hastened the redefinition of reputation inherent in the adoption of the double standard, their dislike of the customary form of legal defence was not as readily shared by their clients. Court officials already suspicious, like their colleagues quoted in the parliamentary report, of the conjunction of gender and class so common to defamation litigation, continued to rub up against clients who favoured public procedure and penance and the restoration of reputation to privacy and the payment of damages. The assault on respectability and decorum that defamation and its punishment represented, as well as an influx of proctors trained outside the county in common rather than ecclesiastical law, undoubtedly contributed to the ready compliance at Wells with statutes and procedural changes that succeeded, by the third decade of the nineteenth century, in redefining the crime and its punishment and consequently in weakening the courts and reducing their clientele.<sup>108</sup> Emphasis shifted from

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<sup>108</sup>Houlbrooke contrasts the proctors' desire to regulate the flow of litigation at times when more lucrative business offered itself with the persistent interest individuals exhibited in their own reputations. (In Norwich, litigants could turn to the commissary court when the consistory was unreceptive). In periods when business was slow, as after 1630, defamation accounted for an increasing share of new causes and judges complied with litigants' desire for a cheap and swift 'public vindication' by avoiding costly sentences and by assigning penance. It was only in the context of a judicial system in decline that court personnel could finally impose their valuation of defamation and its just punishment on litigants: Church Courts and the People, pp 81; 83; 87-88.

traditional penance to costs, which skyrocketed; from early settlements to sentences and to legal harassment in the form of signification. With the passage of 7 Wm. & 1 Vic. c.45, the Victorian parish church ceased to be a public forum for matters relating to the ecclesiastical courts. Decrees, citations and proceedings were not to be read 'in any Church or Chapel during or immediately after Divine Service', and were instead to be affixed to the church door. While these revisions accorded nominally with the needs of court personnel (the new, lengthier causes could generate much more revenue), they resulted in a procedure devoid of internal flexibility and no longer responsive to the needs of the courts' traditional clients.

It is never easy to distinguish push from pull, but changes in the behaviour of litigants over the long term suggest that a re-evaluation of reputation internal to plebeian sexual culture also contributed to the decline in defamation litigation. We have noted the widening sphere of operation of the double standard and considered some of its ramifications for defining and defending reputation. Changing material conditions and social relations also required new ways of defining character and could lead to a diminution in the courts' usefulness in protecting one's good name. In the eighteenth century, communal and neighbourly ties were increasingly disrupted by mobility and alterations in the relations of dependence between rich

and poor, men and women, masters and servants. A unitary definition of reputation, whether for men and women, or for work and leisure, became increasingly anachronistic. It has been noted of the sixteenth century that 'somebody who was alleged to have defamed her neighbours or sown discord amongst them was an unpopular figure whose prosecution was readily supported by fellow parishioners, and was amongst those offenders more likely to be forced to clear their names or to do penance'.<sup>109</sup> Yet by the mid-eighteenth century, the community had ceased to take collective responsibility for the prosecution of malicious gossips and scolds and it is clear that the numbers of defamation litigants had begun to decline by this time.<sup>110</sup> Male

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<sup>109</sup>Ibid., p. 47.

<sup>110</sup>Houlbrooke has suggested that whether you had to clear yourself of an imputation of sexual misconduct, or whether your defamer was prosecuted ex officio as a malicious gossip, depended on the attitudes of churchwardens and judges: Church Courts and the People, p. 80. Judges, then, may have eliminated this type of prosecution without popular consent as the fissure widened between classes over the issue of reputation. Presentment of scolds was common at the Durham church courts between 1560 and 1675: Rushton, 'Women, Witchcraft and Slander', p. 125, and indictments of women described as 'sowers of strife' are to be found among the Somerset Quarter Sessions papers of the 1730s. They are all described, as Mary Whiting of Croscombe was, as being 'of ill Name, Fame Reputation and Conversation and a dayly Disturber of the peace...sower of strife and discord among her neighbours in so much that divers Strifes Quarrels and Discords Between divers Liege Subjects...have arisen and been to the great Disquietude and Disturbance of the people': Q/SI 354 (Wells II, 1735). It is possible that this offence was absorbed into the category of breaches of the peace after about 1737. Across the border in Dorset, a self-described scold from childhood published an apology in a newspaper in

complainants, in particular, had begun to voluntarily abandon the courts before the eighteenth century; their resistance to the courts' intransigence at mid-century only indicates that the process had not yet reached completion. The acceptance of penance performed in open court, which may have had its original rationale in keeping costs down, also suggests that litigants were willing to exchange a certain amount of publicity for economy, though they remained far more attached to the symbolic act, with its symbolic publicity, than court personnel would have liked. Finally, the new emphasis on winning suits exemplified by the choice of dependent witnesses marks a profound shift in values among some of the clients of the church courts, clients frequently drawn from the same towns and the same social classes as their more traditional counterparts. The volume of defamation business dwindled as high costs and the laws governing contumacy conspired to deprive the victim of defamation of a customary form of redress, but

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1785 in order to avoid defamation proceedings: 'I have for forty years continually disturbed the peace of the whole parish; keeping them in continual fear and dread of my non-parallel tongue, by which I have acquired the name of top'....: N&Q for S&D, 5 (1897): 121-22. An inquiry as to whether churchwardens could name any 'Railers, unclean and filthy talkers, or sources of sedition, faction and discord' was included in Visitation articles as late as 1813. However, they may not have been circulated outside certain peculiar jurisdictions, and though these churchwardens continued to respond positively to the query concerning adultery, fornication and incest, I have not seen any presentments of scolds among the irregularly preserved returns: D/D/Pd box 2.

among those who were willing to take advantage of the possibilities for harassment inherent in the new proceedings, defamation litigation remained an attractive option.

It must be emphasised that court officials at Wells remained willing to entertain defamation causes far longer than most of their colleagues around the country, and in so doing provide us with an unusual measure of the persistence of certain traditional ideas about honour. The conflict between polite and popular culture was played out at Wells over a long enough period of time to show us the hardening of attitudes on one side and the evolution of values on the other that led to the creation of the dominant sexual culture characteristic of the later nineteenth century. Plebeian women--who were freer to use the church courts, where large sums of money did not have to change hands--and their husbands continued to look to the ecclesiastical courts when their reputations had been damaged, but they did so in smaller and smaller numbers. For many of these women, the new form of litigation which emerged in the 1830s must have appeared vengeful and inappropriate, a bludgeon rather than a finely balanced process of negotiation and restoration. Yet by this time most plebeian women had, like middle and upper class women, ceased to litigate in the church courts, just as they had abandoned the definition of reputation the courts were

originally supposed to defend. With the widespread adoption of the double standard and of multiple characters suitable to the varied social relations of a mobile, capitalist society, the divergence between popular and polite definitions of reputation was erased. It is only fitting, then, that the statutory and procedural changes of the nineteenth century, prior to abolishing the jurisdiction in its entirety, should have created a form of litigation that resembled nothing so much as the private common law actions of the upper classes.



SECTION THREE: DEFAMATION AND PLEBEIAN  
SEXUAL CULTURE

CHAPTER 6  
MEN, WOMEN AND POWER

I. Introduction

The vocabulary of defamation was circumscribed by law and legal convention, and it is only possible to reveal its nuances by studying the way it was applied to individuals in specific places or in response to particular behaviour. The material in the three chapters that follow is drawn from defamation causes brought by women living outside the city of Bath in the eighteenth and nineteenth centuries and, in the third chapter, by women living in Bath between 1800 and 1850. It consists of a series of pictures, vignettes of greater or less detail, which when taken together reveal aspects of a plebeian sexual culture in transition. Subject to the economic and social changes associated with the period, the material roles and power relations of men and women and the definitions of masculinity and femininity against which individuals were judged were transformed. In going beyond the social identity of litigants and the verbal content of sexual insults and examining the situations in which they met and were used, we can broaden our

understanding of this changing culture and the way reputation and sexual insult functioned within it, and we can define with more precision the forces and reactions that brought women to court to defend their names.

The causes discussed below belong to three distinct environments: the rural village, the market town and the city of Bath. A certain proportion of the provincial suits, especially those dating from the eighteenth century, reveal a rural society entirely distinct from the bustling metropolis Bath had become by 1800. The participants in these causes are familiar: widows, unmarried daughters in their early twenties who lived either at home or with other relatives, younger daughters who had spent time apart from their families and men who mixed trades and agricultural pursuits. Immediate and more distant kin acted some part in most of these disputes; occasionally plaintiffs and defendants were drawn from different branches of the same family. Mobility is much in evidence, but is over short distances.<sup>1</sup> Ties of kinship, of neighbourliness and of

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<sup>1</sup>It is difficult to identify family members among the participants in a suit. Marriage, remarriage and baroque naming habits obscure kinship and undoubtedly we are overlooking a good deal of intra-familial defamation. Hunt, Somerset Diocese, p.232, cites an example of penance performed at Barrow Gurney by Moses Yeates, father of the parish clerk, for defaming his sister-in-law, and we can locate the cause: Marshall and

economic dependency did not resolve into a single hierarchy, but interlocked in determining the shape of support for the principals in local feuds. At the same time, a parallel world centred on the county's market towns emerges in which the definition and defence of female sexual reputation is altered by the diversity of employment opportunities for women and the diminution of the intimacy that characterised small villages.<sup>2</sup> In Bath, though the even greater disproportion of women, and of working women, exacerbated the conditions produced in market towns, the ways in which the anonymity of towns and cities might be relieved are more apparent. Migration took place over short distances and usually relied upon the prior residence of a former neighbour, kinsmen or friend; it populated lodging houses or streets with men and women who shared a common place of origin or

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Marshall v. Yeates, D/D/Ca 426(1759). Yeates called Joanna Marshall 'Whore and one Bluet's whore'. Pember-ton, 'Nottingham 1660-1689', Chap.V, Part 1, p.22, has found much defamation within families in his sources. Intra-familial contention, particularly between husbands and wives, comes across more clearly in Articles of Peace.

As to mobility, Grace Clarke, a young spinster and a witness in a cause discussed below, was typical: she had moved from Yarlington to Pylle, less than ten miles to the south, before settling in East Pennard: Clarke v. Sealy, D/D/Ca 385B(1744) and D/D/Cd 134(1744).

<sup>2</sup>We know less about the jobs held by specific defamation victims in these towns than we do about the employments of their counterparts in Bath, but the range of economic activities of townswomen is discussed at length by Pinchbeck in Women Workers.

a minority religious affiliation. Local solidarities which might extend no further than the adjoining house recur in the Bath defamation causes and remind us that common fame, reputation anchored to something more than one's immediate prospects, could retain its meaning in the urban environment.

Depositions help us to identify the particular physical settings as well as the relationships between individuals or groups that led to conflict. The largest number of defamation causes, among those for which it is possible to determine a setting, originated in inns, pubs and alehouses. The public house was a place where animosity was less restrained and might find expression in verbal as well as physical abuse. Fairs, revels and club days form the background to other causes and again were places where alcohol and the absence of quotidian restraints might encourage loose tongues. Alcohol played its part in both locations, but the power relations that were in dispute were quite different. In pubs it was attempts by female publicans to assert their authority that provoked much of the abuse, while at fairs it was competition between men (sometimes over women, and sometimes subject to female intervention) that led to conflict. Contention over property, not surprisingly, formed the basis of many suits that share a rural setting. Trespass and agricultural accidents, the

straying of sheep or the escape of a pig, could lead to bitter verbal exchanges in fields and in gardens. The urban equivalent of this sort of encounter was the loud quarrel in a public street. In both settings, defamers attempted to humiliate victims before their neighbours, family and dependants. The lodging house and the public market were popular scenes for defamatory incidents unique, as far as one can tell, to the city of Bath.

The most common relationship between defamer and defamed, of course, was that between a man and a woman. Refinements of this relationship can often be deduced from depositions. Some women were routinely subjected to abuse: female publicans, landladies and other women who wielded authority among men or who were called upon to mediate disputes. Others participated in potentially contentious relations which specific individuals (masters and servants) or groups of individuals (landlords and tenants) which had little to do with gender. Rural shopkeepers, as the bulwarks of local credit systems, might find that relations with customers suffered in bad times.<sup>3</sup> Finally, female roles and female sexuality and conjugality were often defined and regulated through gossip that could be construed as defamatory.<sup>4</sup>

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<sup>3</sup>Heath, Peasant Life, pp.316-317.

<sup>4</sup>The use of gossip to regulate sexuality was certainly not restricted to women. John Taylor first

Depositions are less helpful when it comes to determining what made it desirable or even imperative for women to litigate. While they illuminate the immediate circumstances of defamatory episodes, antecedents to disputes, such as thwarted affections or ancient feuds, are obscured by this evidence. Kept closely to libels that asked what words had been spoken, by whom, and in what manner, witnesses were discouraged from disclosing any but the most recent causes of the present litigation. That some litigation was frivolous, or part of a long-term strategy of persecution or revenge, and had little to do with specific words spoken in a given place, cannot be doubted.<sup>5</sup> But that most defamation suits

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heard that "there is great Talk in the Town about Mr. Rendall and his Servant Maid Betsy Walter, she is gone home with Child by him" from John Griffin when they were 'in Mr. Hudrwood's field in the haymaking Season'. The progress of the rumour through the environs of Glastonbury brought John Withey, who may have been engaged to Walter, to her defence; he confronted Taylor, who repeated the story, and then persuaded Walter to go to court to clear her name. The issue was not so much premarital pregnancy as paternity: *Walter v. Taylor*, D/D/C (1817). In *Tutton v. Lovell*, discussed in Chapter 7, below, some of the men who pass around the libellous indictment in the alehouse have just returned from haymaking where, presumably, they discussed its contents. Haymaking was not an exclusively male occupation, but the two sets of depositions refer only to male participants and the gossiping described by Taylor seems to have excluded women.

<sup>5</sup>Houlbrooke, Church Courts and the People, p.80, states: 'Abusive exchanges often arose out of quarrels over such things as small items of disputed property or what was felt to be slighting behaviour'. Sharpe, Defamation and Sexual Slander, pp.22-3, examines a sample of

were more spontaneous affairs is supported by the typically short period that elapsed between defamation and the commencement of a suit, and by the infrequency with which adversaries in the church courts turned up at common law tribunals.<sup>6</sup> The pictures with which we are left, then, are incomplete and without background. Their very spontaneity, however, and the sharpness of their focus upon the present, assures us of their vitality.

In the chapters that follow we will use depositions to examine themes central to the study of a sexual

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forty-five causes which provide some clue to their antecedents. Thirty-six involved the use of words in anger rather than idle gossip. Sharpe ascribes this, in part, to conscious manipulation of the law: the provoked insult could yield the satisfaction of litigation and the prospect of arbitration to end the feuding. This, as he points out, only worked in a society where recourse to law was as acceptable, or as honourable, as recourse to violence.

<sup>6</sup>A check against assault indictments at Quarter Sessions and Assizes reveals about fifty cases where participants in defamation suits were involved in assaults in a similar time period. Because of the difficulty in dating defamatory incidents in the absence of cause papers, it is rarely possible to decide whether these assaults were simultaneous, springing from the same events, or whether they represented a form of legal retaliation. The cases where a plaintiff assaults a defendant, or vice versa, are very rare. More frequently, relatives take up the cudgels and their victims may in turn be witnesses, friends or relatives. Comparison of the two sets of records does identify those individuals or families who are particularly litigious (or violent). The incidence of complementary litigation at Bath must be traced through other sources because the magistrates there were handling assault cases on a daily basis and at local Quarter Sessions. (See Chapter 8, below, and Neale, *Bath*, p.88). Similarly, an undetermined number of assaults, such as those mentioned in



culture in flux. The first two chapters will take up two of these themes using material from provincial Somerset, the nature of gender relations and the definition and defence of reputation. In Chapter 6 we will consider the impact, public and private, of sexual insult and then we will go on to explore more specifically its retaliatory use by men against women who exercised authority over them.<sup>7</sup> It is my thesis that sexual insult was used to mediate power relations between men and women in Somerset in the eighteenth and nineteenth centuries, a time when economic and social change undermined the traditional balance of power between the sexes inside and outside the home.<sup>8</sup> In Chapter 7 we will consider in detail two causes that signal important shifts in the way reputation was defined and defended in this transitional period. The first records the decline of a popular institution intended to regulate sexually in the neighbourhood of Wells in the last quarter of the eighteenth century.

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Whittle v. West, D/D/C (1831), Board v. Hill and Hill v. Board, D/D/C (1843) were handled by local magistrates.

<sup>7</sup>Not all women who were defamed in these circumstances, of course, went to court. See Taylor, Eve and the New Jerusalem, pp.153,186,187, for verbal abuse meted out to Owenite lecturers, male and female.

<sup>8</sup>The literature on the impact of the industrial and agricultural revolutions on sex roles is already extensive. I have relied particularly, here and below, on Pinchbeck, Women Workers, and Taylor, Eve and the New Jerusalem.

In it the actions of the popular court, held annually at the local revel, are challenged in the ecclesiastical court by a young woman who claims she has been defamed by this public scrutiny of her sexual life. In the second cause, set in the fourth decade of the nineteenth century, another young woman is accused of spreading venereal disease among the young men of her village. Her defence tests the church courts' capacity to function in an era when reputation was becoming an increasingly fractured concept, varying with gender, marital status and class; and with one's daily occupations and activities. Both causes are unusual in the extent and quality of their documentation (the numerous witnesses were not held to a description of the incidents, but were allowed or instructed to consider a wider range of questions) and in their focus on the sexuality of young, unmarried women. Together, they provide two of our most vivid pictures of the plebeian sexual culture of Somerset in this period, and of the role reputation played in it at points fifty years apart.

The final chapter will be devoted to defamation causes arising in Bath in the first half of the nineteenth century. Bath women, afloat in a sea of strangers occasionally punctuated by the familiar face of a kinsman or old neighbour; competing for work and for spouses, and measured against the large population of fallen women in

their midst, were more vulnerable to insult, and relied more on the courts to restore their good names, than their provincial sisters. Most importantly, their sophisticated adversarial use of the ecclesiastical judicial system and the narrowly defined reputations they sought to defend illustrate earlier and more forcefully than elsewhere in the country the ways in which changes in gender relations and in the way reputation was evaluated could lead to modes of defining and defending reputation that ultimately made ecclesiastical defamation litigation an anachronism.

In the first half of this chapter we will describe the impact of insult and the ways in which the effect of sexual slander and the necessity for litigation might be mitigated by the situation in which the words were spoken, a woman's relationship to her defamer, her social position and material prospects and the demands of complicated legal strategies. Defamatory words, spoken under suitable conditions, were widely held by those who used them and those who heard them--as victims or as bystanders--to cause personal pain, marital discord, damage to reputation and material loss. There is no simple way to separate and weigh these consequences. The fact that so many plaintiffs were married women suggests that sexual slander continued to operate powerfully in at least one personal sphere in this period, by recasting

the husband and wife as cuckold and whore. Male honour and the reputation of the conjugal pair as well as the continued comfort of the marriage were threatened by insults to wives. At the same time, a great many of the women who pursued plenary causes at Wells, married or not, had well-defined material roles or prospects, in the shape of a business, a job, a suitor or a legacy, that required defence from the damage done to their reputation by sexual insult. Small proprietors, wage-workers and landowners, most of whom were defamed by the men they did business with, accounted for a large proportion of the identifiable female plaintiffs at Wells between 1733 and 1850.

One can identify certain situations as being more likely to lead to litigation than others. These frequently involved women who were materially vulnerable through their jobs or small businesses or claims to property. We have chosen to focus, in the second half of this chapter, on the plight of women who were defamed by men, and specifically on the predicament of women whose work took them outside the domestic sphere and whose authority was challenged and undermined by sexual slander. Nor is this an arbitrary selection, for if, in the sixteenth century, defamation litigation reflected the separate spheres of rural men and women of some small property, the clearest image it presents of Somerset in the eighteenth and nineteenth centuries is one of

unease arising from the transition in the assignment and acceptance of sex roles.<sup>9</sup> Sexual language was used by men to discipline women who challenged their supremacy, and it referred, increasingly, to emerging definitions of femininity that denied the contemporary variety of female material roles and limited women to a sexual function within a domestic setting. This exclusive connection between femininity and sexuality not only made it possible to degrade and humiliate a woman by calling her a whore, but also to threaten her job or business if she was a working woman. As long as the word 'whore' retained its levelling influence, women had reason to fear its use and resorted to legal action to remove its stain.

It would be difficult to attribute this unease to the adoption of new forms of employment by these particular women.<sup>10</sup> The victims of defamation we are describing performed menial and commercial functions in pubs, shops, markets and lodging houses and as servants

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<sup>9</sup>Chaytor, 'Household and Kinship', p.26.

<sup>10</sup>Where change was especially rapid and dramatic, where factories or large workshops routinely took women outside the home or family business, traditional modes of defining and defending reputation probably eroded more quickly. The cloth manufacture, much of which had been carried on in workshops in west Somerset well before the industrial revolution, sent few identifiable litigants to Wells. And in Bath, the large numbers of women who took up the needle or entered the textile factories in the vicinity in our period are similarly unrepresented.

and pedlars that were traditionally within the realm of female occupations.<sup>11</sup> Likewise, landholding and property ownership were not unique to the women of this time and women who fetched their husbands home from pubs, or defended the property or interests of their men were doing nothing new. It is of course possible that this continuity is misleading: that women who had formerly worked casually to supplement a husband's wage and who integrated this part-time employment with domestic concerns were now the sole supports of their families; and that in an era when small landholders were beset by the costs of enclosure, the disappearance of the commons and the concentration of land in larger, more efficient holdings, strife between those on the border of propertylessness was intensified.<sup>12</sup>

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<sup>11</sup>Shopkeeping was a common female employment in the eighteenth century as the enforcement of the Act of Apprenticeship declined. Shops could be operated in the home, as extensions of a husband's trade or as separate enterprises, and might require little skill or capital. The changes Pinchbeck describes as driving women from retailing (the separation of home and workshop, the growing need for specialised training and for capital, and the changes in technology and fashion that transformed many female trades into male trades) would have had little impact outside the city of Bath. Even there, the overwhelmingly unequal sex ratio and the importance of supplying lodging and provisioning guaranteed a place for tradeswomen well into the nineteenth century: Women Workers, pp.282-84;291-94;304.

<sup>12</sup>See Taylor, Eye on the New Jerusalem, pp.110-11 and Pinchbeck, Women Workers, pp.22-3;45, for the shifting balance between domestic, supplementary and waged employments in this period.

In addition, the men and women of Somerset were confronting new economic conditions that generally altered the sexual division of labour inside and outside the home and which generated tension between men and women that was exacerbated when women imposed their authority on men. The final round of enclosure, the switch to pastoral agriculture and the concentration and mechanisation of the textile industry destroyed many traditional male and female employments and modes of production and replaced them, at least in the short-run, with day labour, low-wage female employments, such as gloving or frameknitting, and unemployment. In Bath, women and working women far outnumbered men, and here and elsewhere male labourers were increasingly dependent on the wages of wives and children whose employment opportunities within the home were swiftly contracting. The fluidity of material roles, the dependence on a woman's wage and competition between men and women in some trades had a direct bearing on male authority within the home, and created antagonisms between men and women that could find expression in the physical abuse of one's wife as well as in the sexual slander of a female publican.<sup>13</sup> Until the redistribution of economic tasks and the

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<sup>13</sup>Taylor has quite a bit to say about the impact of these changes on working class patriarchy inside and outside the home and the consequent appeal of Owenite ideas on sex equality to many of these women. The woman

reallocation of authority that took many women from the domesticity of the family as a unit of production to the domesticity of the later nineteenth century, with its estrangement of women from productive functions was accomplished, uncertainty as to sex roles informed relations between men and women. If the language of insult expressed a deep and enduring sexual division within this society, its use by men in this context points to a specific (and materially determined) ambivalence about the exercise of power by women.

## II. Injury

While verbal insult could be ignored or deflected in some circumstances, there are many indications that defamation resulted in personal and material harm. The

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worker, she observes, 'posed a particularly complex and painful threat, since her deployment affected not only the balance of sexual relations in the labour market but also sexual relations in the working-class family. Competition and antagonism between men and women in the sphere of waged work often translated into disrupted patterns of patriarchal authority in the domestic sphere': Eve and the New Jerusalem, p.94. In working-class households in London in the 1840s, women who became family breadwinners and undermined the material basis of patriarchal authority were subject to physical abuse by their husbands: Nancy Tomes, 'A "Torrent of Abuse": Crimes of Violence between Working-Class Men and Women in London, 1840-75', Journal of Social History 11(1978): 328-45. Tomes also notes that in a period when resources were scarce and their allocation led to fights, cross-gender verbal and physical abuse was common both inside and outside the working-class household, and that the difference between choosing one's wife or an unrelated woman as an adversary lay in community perceptions of such violence.



value placed on verbal insult by observers and the law alike was determined by the circumstances under which defamatory words were spoken. This included an evaluation of the characters of the plaintiff and the defendant and of the state of mind of the defendant at the time. Bystanders and judges might assign very different weights to each of these factors.

Witnesses in defamation causes were routinely asked if the plaintiff had a good character and reputation, and whether these had been injured 'in the face of friends, neighbours, acquaintances' by the defamatory words. The answers were usually repetitions of the formula used; occasionally witnesses suggested that they were not in a position to make such judgements.<sup>14</sup>

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<sup>14</sup>The second and third articles of defamation libels, on which witnesses had to depose, covered the time, place and defamatory words (and whether they had been spoken 'in an open and publick manner...much tending to the injury and disgrace' of the plaintiff) and the plaintiff's reputation and injury (whether the plaintiff's fame had been damaged and whether the words were spoken in malice). Though many witnesses reported that no one believed the defamatory words, this was no obstacle to successful prosecution because defamation was a spiritual offence. 'Testimony on these points favourable to defendants may have helped to bring about some peaceful settlements', according to Houlbrooke, 'though in other cases sentences were given for plaintiffs despite such evidence': Church Courts and the People, p. 82. In *Jones v. Wells*, D/D/Ca 452(1831) and D/D/C (1831), the proctor used a pre-written libel form which left blank spaces for names and a description of the defamatory words. The article on reputation, already in place, could be repeated by witnesses or answered with a simple affirmative. Libels in the eighteenth century show far more variation.

Lively opinions do, however, seep through the legal formula, and we get an inkling of what people thought of their neighbours and the value they placed on their reputations.

Typical are the descriptions of Dionis Charmbury, who brought suit with her husband in 1759.<sup>15</sup> The Charmburys lived in the tiny village of Bathampton, and three of the witnesses, all men, had known Dionis for several years and had lived as her near neighbours. They described her as 'a good neighbour' and a 'good honest woman'. One 'never knew anything to the contrary but that she was a sober well behaved good woman' and another, who had been hired by her husband, noted that Dionis 'was good to him when so hired'. He concluded that she was 'a good sober woman and so in her neighbourhood she is reputed to be'. These men carefully substantiated their personal opinions with what they considered to be the local estimation of Dionis Charmbury's character.

Witnesses frequently contended that the friends and acquaintances of a defamed woman did not believe the charges levelled at her, either because the woman was known to bear an exemplary character or her defamer was notoriously lacking in credibility. John Steel felt that though a good many people heard Robert Gratewood, a publican, call

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<sup>15</sup>Charmbury and Charmbury v. Brooks, D/D/Ca 426 (1759) and D/D/C (1759).

Mrs. Mees a 'Bitch of a Whore' and a 'murderous Whore' in her absence, her 'good name and reputation were not hurt...because...Gratewood is so vulgar that people dont heed much what he says'.<sup>16</sup> Some defendants attempted to establish that the women they defamed had no reputation to defend, and therefore could not have suffered any damage from their words. John Philip Adams was prepared to ask witnesses whether Ann Batten, the woman he defamed, was 'a person of a bad character and reputation and of little or no credit and that none of the neighbours take any notice of her or of what she says'. Adams suggested that not only did Batten's reputation deprive his insulting words of their sting, but that she prosecuted him out of malice and in order to extort money from him, a not uncommon supposition in defamation causes.<sup>17</sup>

Finally, some consideration was given to the sobriety of the defendant and the provocation offered by the plaintiff. When Martha Andrews reported to George

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<sup>16</sup>Mees and Mees v. Gratewood, D/D/Ca 423,386,387 (1747); D/D/C (1747). This may not have been the first time that the publican tangled with the law: see Gratewood and Gratewood v. Starr, D/D/Ca 422(1744) and Gratewood v. Starr (John), Starr (Sarah), Wheeler, D/D/Ca 385 B(1744)(A.W.). Rather than interpret this as proof of Gratewood's vulgarity, or even his litigiousness, it might instead be taken as evidence of the defamatory hazards run by publicans and their wives (Hannah Gratewood was the plaintiff or co-plaintiff in these suits.)

<sup>17</sup>Batten v. Adams, D/D/Ca 452(1830) and D/D/C (1830).

Gould, a man who was sitting in the pub where she was selling oysters, that the same John Philip Adams had defamed her, 'he...told her it was not worth while for her to take notice of what he...said when he was drunk'. He added that 'he does not believe...Martha Andrews to be a person of a sober and virtuous Life and Conversation but on the contrary she is a quarrelsome and fighting Woman'. Moses Caple, a nineteen-year-old labourer who had heard Mary Hill 'ridiculing' Frederick Board 'about his Wife and Mr. Wait the Parson of Chew Stoke', deposed that Hill was 'always making disturbances about Men and their Wives at Chewstoke'.<sup>18</sup>

The extent of the personal injury caused by sexual slander did not always tally with the damage done to a woman's public fame. Hugh Wine deposed that Elizabeth Bevan, who had been defamed by James Higgins in his public house in Portbury, had a good reputation among her neighbours, and though 'he believes that the speaking of the Words predeposed sticks in her Stomach...he does not believe her good name is injured' because those who knew her did not believe the defamatory words. Philip Stock, who saw John Gould spit on Mary Hollister and heard him call her 'coarse wool whore' described the effect of this

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<sup>18</sup>Andrews v. Adams, D/D/Ca 452,441(1832) and D/D/C (1832); Board v. Hill, D/D/Ca 443 (1843) and D/D/C (1843).

abuse. Mary Hollister 'cried at...Gould's using her so ill and this Respondent persuaded her to laugh at him'. The sad result, however, was that 'Hollister and his Wife do not live so happy now as they did before the...Abuse was given'. Ann Lisk was uncertain of the injury Mary Whitcombe received when she was defamed by Esau Ellis in front of the house in Glastonbury she shared with Ellis and his wife, but added that she thought Whitcombe's husband 'a fickleman, and that he may possibly not think so well of her as he did before'.<sup>19</sup>

Women on the verge of marriage could find their prospects eclipsed or undone by an untimely insult. Mary Blacker, who had heard Jane Bateman, the wife of a ship's carpenter, announce that 'Molly Collins...was brought to bed of a fine son', reported that Collins was 'about to be married' at the time of the incident. Blacker felt that the words had injured Mary Collins and were 'the occasion of her not being yet married'. The damage was not permanent, for the cause was abated after several sessions by the marriage of Molly Collins.<sup>20</sup> The fate

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<sup>19</sup>Bevan and Bevan v. Higgins, D/D/Ca 425,446 (1756) and D/D/C (1756); Hollister and Hollister v. Gould, D/D/Ca 430,431,432 (1767) and D/D/C (1767); Whitcombe v. Ellis, D/D/Ca 451 (1824) and D/D/C (1824).

<sup>20</sup>Collins v. Bateman, D/D/Ca 449,450(1758) and D/D/C (1758). Mary Collins's case ran into complications when she attempted to summon the Rev. Emanuel Collins and Robena Collins, a spinster, as witnesses. They were rejected by the court, possibly because they had not

of Sarah Andrews, a 'Maiden woman and of an exceeding good Character' is more doubtful. Her suitor, 'a very creditable and reputable Clothier of Frome a Man of very good Fortune' was 'much displeased at the...scandal' created by the insults of James Pobjay, a malster. One

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witnessed the abuse and would have only been able to testify to the injury Mary Collins had suffered, a subject, if they were her father and sister, on which they could not claim to be disinterested. Yet Emanuel Collins may have rejected for another, far more ironic reason. A Rev. Emanuel Collins was notorious at Bedminster, where Mary Collins lived and was defamed, for keeping the Duke of Marlborough Inn, where he not only dispensed hospitality, but performed clandestine marriages. This business was brought to an end in 1753 by Lord Hardwicke's Marriage Act and on 27 July 1758, the sale by auction of the public house was announced in a Bristol paper. (According to Latimer, *Annals*, p.159. 'if tradition is to be trusted, the shameless extent to which he carried on a similar traffic [in clandestine marriages] brought about the amendment of the marriage law in 1753'. At the sale of the pub it was recorded that it had been occupied by the Rev. Emanuel Collins and let at £20 per year (pp.333-34). Collins went on in 1762 to publish 'some poetical effusions under the title "Miscellanies", in which the depravity of his mind is only too clearly revealed' (p.334)). Undoubtedly the Rev. Mr. Collins's activities prior to 1753 had brought him to the attention of the ecclesiastical authorities, and it may have been his reputation that disqualified him from coming to the defence of his daughter during that troubled year. Despite the notoriety of the father--and to some the service he had provided for so many years must have made him a local hero--the daughter seems to have had her defenders. There is a certain relish to the details that Jane Bateman provided or that Mary Blacker heard that suggests that Mary Collins, who could have easily had an indeterminate bastard rather than a 'fine son', was well-known to the women assembled in the house of Mrs. White at the time of the incident. Mary Collins did marry, and before the suit was brought to a conclusion. Neither her prospective spouse nor the stricter marriage laws proved to be insurmountable obstacles.

declared that 'for ought [she] knows...he may never marry the Plaintiff'.<sup>21</sup>

Marriage was not the only route to material security open to women. Servants, wage-workers and tradeswomen, as well as wives and prospective brides, required good reputations. The vulnerability of working women to sexual insult will be discussed in greater detail below and in Chapter 8. However, it is worth noting that the connection between the sexual slander of a working woman and a suit at Wells was not a predetermined or a straightforward one.

Anyone could take an adversary to the common law courts for publishing words that tended to interfere with their business or profession, but Elizabeth Wilkinson of Somerton seems to have been the only woman to have brought such an action at Quarter Sessions in this period. Wilkinson took three of her townspeople to court in 1784 for entering a conspiracy 'intending to vex and aggrieve [her] and to deprive her of her good name and reputation and to injure her in her business of a Milliner'. The millinery trade 'offered greater scope than any other in which women were concerned, and therefore attracted women with capital and some social standing',

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<sup>21</sup>Andrews v. Pobjay, D/D/Ca 436,397 (1782); D/D/C (1782).

according to Ivy Pinchbeck.<sup>22</sup> Mary Godden the elder, Mary Godden the younger, both spinsters, and Jonathan Davy, a cooper, claimed that Wilkinson 'did lie with a man and that... Mary Godden the younger did see her... lying with a man meaning having criminal conversation with a man'. It was decided that the allegation that she 'Did prostitute herself with men' injured Wilkinson's business, and the defendants were fined £5 each.<sup>23</sup>

Though a fine may have meant more to a woman of Wilkinson's class and profession than the quasi-public apology that she would have received at Wells, women who worked for wages or as servants were much more apt to use the church courts to defend their reputations.<sup>24</sup> Some

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<sup>22</sup>Pinchbeck, Women Workers, p.287. There was an emphasis on gentility in the trade (setting up well required a capital of £400-500) which would have made the insults particularly damaging. However, esteem for milliners was not universal and their workwomen were known to supplement their inadequate wages by prostituting themselves. DeQuincey recorded that Byron accused Coleridge and Southey of marrying '"two milliners from Bath". Everybody knows what is meant to be conveyed in that expression'. (Quoted in A. Barbeau, Life and Letters at Bath in the xviiiith Century (London: William Heinemann; New York: Dodd, Mead & Company, 1904), p.107n.

<sup>23</sup>Q/SI 404 (Taunton, 1784). The witnesses were Wilkinson herself, Ann Wilkinson, Mary Dunford and Ann Keates. The fines are reported in Q/SR 353 (Bruton, 1785).

<sup>24</sup>A Somerton spinster named Elizabeth Wilkinson



of their causes were settled quickly and cheaply, and have left few traces; women who engaged in lengthy litigation were often backed by their families or employers who thought it worthwhile to invest in their good names. Isabella Stroud, a servant to a gentleman farmer in Godney, prosecuted the overseer of the poor of Meare for saying '"Yes! and all her illness has been, she has been in the family way and has miscarried in Mr. Comer's House and that was the reason Mr. Comer sent for the Doctor"'. The Comers, who sent Isabella home and did not pay for her medical care, instead enjoining her mother to seek parish relief, saw enough of their reputation involved to oblige Isabella to clear her name in the church courts. (The point is never raised, but Mr. Comer himself may have been implicated in any rumour of Isabella's pregnancy.) They assisted with the suit and were probably responsible for the participation of a solicitor on Isabella's behalf.<sup>25</sup>

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cited three spinsters and a widow to the diocesan court for calling her 'Dennis Thorpe's whore', a crime to which they immediately confessed: *Wilkinson v. Paddock*, *Paddock, Paddock, Paddock*, D/D/Ca 397(1786). Somerton was a market town with a population over 1000 by 1801, and there may have been more than one Elizabeth Wilkinson in it. However, if it is the same woman, it suggests that the unmarried milliner had continuing problems defending her reputation and was not unwilling to use the church courts to defend her name.

<sup>25</sup>*Stroud v. Churches*, D/D/Ca 441 (1834) and D/D/C (1834). Godney is part of the parish of Meare. Parishes, always unwilling to provide for pregnant

Catherine Masters, a schoolmistress, had a professional as well as a personal reputation to protect and she deployed the church courts and the common law courts in defending herself from the insults of Nancy Moss.<sup>26</sup> Masters and her husband James kept a boarding school in Keynsham and her feud with Moss, a shopkeeper, lasted at least five years. Nancy Moss originally carried her tale of Catherine Masters's adultery to James and Mary Harris, two of the very small number of gentlefolk to testify in defamation causes, and the Harrises appear to have been the instigators of the litigation at Wells. When they heard Moss's allegations, Harris and his wife became alarmed for Catherine Masters who 'had then the care of two of [their] Children'. James Harris deposed that 'he hath known Mrs. Masters for many years and that she always bore a good Name and Character and such as he thought it his Duty to inform the Plaintiff and her Husband of the Scandal published by the Defendant thinking that if the same was permitted to go unnoticed it would be an injury to them in their school'.

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spinsters, put particular pressure on employers of temporary servants who suddenly appeared to be pregnant; the Comers may have responded to this pressure. For earlier examples, see Quaife, Wanton Wenches, p.102.

<sup>26</sup>Masters v. Moss, D/D/Ca 479(1811) and D/D/C (1811).

James and Catherine Masters left nothing to chance in their prosecution of Nancy Moss, and she emerged from the litigation with a sense of grievance. Sentence was originally read against Moss in 1812 and costs were taxed at £32 2s. 0d., a sum that did not include the Masters' solicitor's bill, which the judge did not allow. Moss, who was probably quite unable to raise this sum, was excommunicated and letters denunciatory were read out in March 1813. An agreement between the parties sparked, perhaps, by Moss's own need to repair her commercial reputation, was reached and in mid-August Catherine Masters consented to the absolution of Nancy Moss. The agreement may have released Moss entirely from paying costs; there is no record of her performing penance. The settlement, though it may have satisfied James and Mary Harris, did not end the conflict between Nancy Moss and Catherine Masters. Moss's attacks on Masters, verbal and physical, had not ceased by 1816. In July of that year, Masters swore out Articles of the Peace against Moss, explaining that Moss had abused and ill-treated her many times during the last three years.<sup>27</sup> Masters took action on 5 July, when

having heard that...Nancy Moss had abused her  
at the White Horse Inn, near to this Deponents

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<sup>27</sup>Q/SI 436(Midsummer, 1816): Articles of the Peace. Moss may have been a widow by this time, for there is no mention of her husband in the document.

Dwelling House, she went to enquire of the truth thereof of the Landlord of the sd Inn when... Nancy Moss came to this Deponent, held up her fists very near this Deponents face and said "I long to do for thee, I long to settle thee" and then struck this Deponent a violent blow between the shoulders, at the same time pushing [her] out of the passage.

Nancy Moss had no James Harris to stand surety for her, and this incident may have resulted in her imprisonment. If her first costly entanglement with the Masterses had not ruined her, this may well have done so.

Inheritance could consolidate the financial independence of a widow or enhance her eligibility in the marriage market, but it could also bring her into conflict with other potential heirs. On the advice of her solicitor, George Edward Taylor, Ann Morse prosecuted James Morse, a cordwainer, and Charles Morse the younger, a tinworker and brazier, for defaming her. Taylor had been present in Ann Morse's house when James called her a 'bloody whore' and Charles suggested that she should be committed to the county gaol: 'thee art a Whore and a bloody Whore, and damn your eyes you ought to be sent down to Ilchester'. He recalled instructing his client 'to desist from saying anything more to the Defendant [James Morse]' and telling her 'that she was to blame if she did not punish him for his conduct'. Ann Morse did not hesitate, for the issue of her sexual status was at the centre of her dispute with the relatives of her deceased husband. James Morse of Puriton had died

intestate in 1827, and Charles Morse, a Bristol shoemaker, had twice charged her in the church court with submitting inadequate inventories of the deceased yeoman's goods. The Morses further claimed that Ann had never been married to James Morse, which would have barred her from inheriting any property, and in 1828 Charles Morse the younger promoted an ex officio suit against her in the archdeacon's court for committing the crime of adultery, fornication or incontinence with James Porter.<sup>28</sup> Porter, a middle-aged 'Gentleman', had known Ann Morse for 'nearly twenty-five years' and been present when she was defamed. It is likely that Ann Morse's reputation came under attack, not because she led an irregular life, but because in her vulnerable position--as a widow of a man with property and a number of potential heirs--it was possible to undermine her title

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<sup>28</sup>Morse (Ann) v. Morse (James), Morse (Charles the younger), D/D/Ca 451 (1827) and D/D/C (1827). For the testamentary causes, see D/D/C (1827). For the incontinence cause: Morse (Charles the younger) v. Harris otherwise Morse, D/D/Ca 477(1828). The confusion as to Ann Morse's partners is compounded by the fact that her husband and Porter shared a Christian name. When James Morse originally defamed her and she asked him whose whore she was, he pointed to a portrait and said '"look there--there's Mr. James"'. (The Puriton parish registers are silent on the subject of Ann Morse's marital history, but her Bristol connection could have provided an alternative location for her weddings). Quaife, Wanton Wenches, p.143, notes that children intent on protecting their inheritance from interlopers did not hesitate to present their widowed mothers for sexual incontinence. This constituted part of the rigorous supervision of propertied widows by families and parishes.

to her deceased husband's goods by first denying her marriage and then accusing her of sexual incontinence.

### III. Men, Women and Power

The use of the church courts to defend the reputation of working women defamed by their customers and clients, while not entirely new, probably reached unprecedented levels in the period under discussion, and may help to explain the unusually long survival of the defamation jurisdiction at Wells.<sup>29</sup> In the remaining pages of this chapter we will consider the predicament of some of these women, the largest single group of whom worked in pubs as publicans, publicans' wives, servants or pedlars. The use of sexual insult by men to flout the authority of these women reflects a disjunction between the contemporary sexual division of power and the sexual division of labour, a disjunction that found further expression in new definitions of femininity. Women were awarded a variety of non-domestic economic roles without the power that would have accrued to them had they been held by men and they were increasingly constrained by a

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<sup>29</sup>Chaytor, in 'Household and Kinship', uses her defamation material to illustrate her argument about the different spheres inhabited by men and women, and suggests that men called each other thieves in the course of property disputes and women called each other whores while engaged in domestic duties: see especially pp.25-6;49-51.

rigidly defined gender role which left no room for work, power or assertion. Men who were dissatisfied, no matter how transiently, with the imposition of authority by these women, men who refused to drink up and go home or who disputed the price of their liquor, could effectively challenge that authority by calling their adversaries whores. The woman engaged in commerce was all the more easily reduced to the mercenary whore; any female profession could be assimilated to the oldest female profession by the defamer. The fact that this battle was carried on in the metaphorical language of defamation should not blind us to the material consequences of sexual slander. In these precarious circumstances, the authority of women could be undermined and working women disciplined by the timely use of sexual slander.

The disputes in pubs that ended in defamation litigation, though they arose under a variety of circumstances, conform to the dominant gender pattern. The defamers, whether publicans or customers, are men and the victims--widowed publicans, wives of publicans, servants, pedlars or customers' wives or mistresses--are women.<sup>30</sup>

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<sup>30</sup>Pemberton, 'Nottingham 1660-1689', Chapt.V, part 1, p.20, has found many defamation causes in which the plaintiffs are innkeepers' wives or alewives. Male publicans did not emerge unscathed, but their troubles are recorded in the records of the common law courts. James Webber, a victualler of Lyncombe and Widcombe, brought a charge against Richard Nicholls at Quarter Sessions in 1811. According to Webber's complaint,

'[T]he keeping of inns and alehouses,' according to Pinchbeck, 'was regarded as a very proper and suitable business for women, and one by which they could easily maintain their independence, but the propriety of innkeeping was no doubt directly proportional to the size and status of the establishment, and did not necessarily extend to female employees of the publican.<sup>31</sup>

The majority of the suits, and the ones which will be discussed below, arose from confrontations over female authority: the right of a wife or a mistress to fetch her man or her servant home; the right of a female publican to impose order and to carry on her business as she chose. The publican's wife, or the widowed female publican, was an easy target for male defamers. There is no doubt from the depositions that she could respond in kind, though she may not have been as quick as her male colleagues to insult customers or their wives without prior provocation. In the church court records we see only two corners of this web of insult and counter-

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Nicholls had arrived the evening before, used 'very gross and indecent Language and was in the Act of exposing himself and putting his private parts upon the Table in the Public Tap Room before a number of People, when [he] took hold of him to prevent so great an indecency'. Nicholls then called Webber a damn blasted bugger, assaulted him and raised a mob around the house: Q/SR 383 (Wells, 1812).

<sup>31</sup>Pinchbeck, Women Workers, p.296. She finds women of all levels of the business in eighteenth-century licensee lists.



insult; the publican defaming his male customer, and the male customer defaming the female publican. As the courts became less receptive to the idea of the damaged male reputation, the first corner drops away, leaving the vulnerable woman behind the bar, surrounded by male customers of more or less goodwill. Indeed, the point is twice made in the following causes that the publican was the only woman present on these occasions, and this isolation within a male bastion (even if it were only temporarily so, for we know that women frequented pubs) must have contributed to the precariousness of female authority in this situation.<sup>32</sup> When attempts at conciliation failed--the lengths to which female

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<sup>32</sup>The respectability of the pub was in marked decline in the nineteenth century, and this may have contributed to these women's troubles: Brian Harrison, Drink and the Victorians; The Temperance Question in England 1815-1872 (London: Faber and Faber, 1971), pp.45-6. Harrison generally refers to pubs and drinking places as male preserves (see particularly p.47). The Owenites, who advocated temperance, made a concerted effort to organise outside pubs in order to include women in their projects. Barbara Taylor identifies this as a change from an earlier period when female Friendly Societies and unions met in pubs: Eve and the New Jerusalem, p.229. Even when wives were not excluded from pubs, they may have chosen to drink apart from their husbands, perhaps with friends of the same sex. George Matthews, a butcher of Trull, explained that he had been drinking with his father-in-law on a Saturday night in 1806 at the Old Angel in Taunton and had gone over to the White Hart (where he then spent half an hour) to tell his wife that he would be riding home behind his father-in-law so she could ride her own horse home: Q/SR 374 (Wells II,1806). This sheds some tantalizing light on patterns of marital sociability.

publicans went to placate their customers may have been dictated by a desire to avoid physical violence--the publican's best recourse lay in the law.

The two earliest causes set in pubs for which documentation survives show male publicans defaming women who attempted to draw male customers out of their public houses. The first incident took place in the market town of Frome on Whit Thursday in 1747.<sup>33</sup> James Usher ran into Robert Gratewood's public house, a few doors from his lodging, to fetch John Steel back to the dyehouse where his master awaited him. Gratewood advised Steel not to go, and in a 'great passion' said to Usher, 'He... shall not go for such a Bitch of a Whore as your Landlady is and...Your Landlady is a murderous Whore and you go tell her so'. Though it was his master who sent for him, and a man who delivered the message, it was Steel's mistress who was abused by the publican, a near neighbour of hers.

One of the genuine proofs of marriage among one's neighbours was evidence that a woman came to the public house to bring her man home if she thought it was too late, or he had been drinking too long, or if she had some news to impart to him.<sup>34</sup> Publicans could object as

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<sup>33</sup>Mees and Mees v. Gratewood, D/D/Ca 423,386,387 (1747) and D/D/C (1747).

<sup>34</sup>See Ferris v. Wickham, Chapter 8, below, and various ex officio causes for sexual incontinence, such as Bridges and Cornish v. Chinnock, Watts, D/D/Ca

strenuously to this wifely prerogative as they could spread disaffection among employees who were subject to the power of their masters. '[I]n the week before or the week after Michaelmas last past', Hugh Wine sat in the kitchen of James Higgins's public house in Portbury, a suburb of Bristol, with Francis Bevan and Joseph Watts. They 'had been in company so together for sometime' when Elizabeth Bevan came in to take her husband home. Higgins 'grew into a great passion', called her a whore and added that 'you are common to Mr. Hore and his man'. Mr. Hore, a local attorney who probably was not present, successfully prosecuted the publican for saying Hore was a 'whoremaster and that he had committed the crime of Adultery with Elizabeth wife of Francis Bevan'.<sup>35</sup> The Bevans' cause foundered on the evidence of Joseph Watts who reported that Mrs. Bevan came in 'scolding and cursing and swearing to get her...husband out of the...house

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385B(1744) and D/D/Cd 134(1744). John Watts's cronies assumed that his cohabitation with his housekeeper, Hannah Chinnock, 'is in the same manner as Man and Wife' because, among other things, 'of the freedom which she has taken in coming to the publick house to fetch him home'. Even more striking was Watts's 'immediate compliance' which appeared to one witness 'exactly like the behaviour of man and wife'.

<sup>35</sup>Hore v. Higgins, D/D/Ca 425,446,447(1756) and D/D/C (1756). Bevan and Bevan v. Higgins, D/D/Ca 425,446(1756) and D/D/C (1756). Hore alleged that Higgins had performed penance a week late, without providing Hore with proper notice so that he might hear the retraction in Portbury vestry. Higgins was once more penitent, this time in the chancel of Portbury church.

home and she broke in the Windows of the...house'.

Higgins 'in a very angry manner becalled...Elizabeth very much and told her she was a parrish Bird Bitch and other bad names' but, according to Watts, he refrained from calling her a whore.

Thirty years later, in 1786, Nancy Clark, the wife of a Banwell shopkeeper, swore Articles of the Peace against Robert Leaker, an innholder.<sup>36</sup> Clark claimed that she had gone to Leaker's public house 'to fetch home her Husband who was there drinking that when...Leaker saw [her] come to his House he began to abuse her and on her persuading her Husband to go home...Leaker told her to go home and if she did not if he had ever the Hands of her he would be damn'd if he did not kill her'. The pregnant Clark had feared a miscarriage ever since Leaker threatened her.

The disputes in which female publicans became embroiled were precipitated by arguments over paying, closing or keeping order. Mary Whittle, who kept a tea and grocery shop in Ilchester with her husband, was called a 'damnation Whore' by James West the younger, a carpenter, in 1831.<sup>37</sup> West made a row over the payment

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<sup>36</sup>Q/SI 406 (Taunton, 1786): Articles of the Peace.

<sup>37</sup>Whittle v. West, D/D/Ca 452 (1831) and D/D/C (1831). A larger feud is suggested: witnesses acknowledged that Whittle's husband had already been

for a quart of cider in Whittle's kitchen, where several men sat drinking, and Whittle's daughter heard him say, 'I'll not go out of the House for such a damnation Whore as you are' after her mother tried to persuade him to leave. Jane Pow was called 'damnation old Whore', 'Damnation old Bawd' and 'damnation bloody old Bugger' at the Blathwaite Arms, her public house in Weston near Bath.<sup>38</sup> The widowed publican was the only woman in the bar when the dispute arose with William Osborn 'about a Glass of Grog'.

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fined £3 by the magistrates for assaulting West. The litigation was probably settled out of court, for the Whittles abandoned their defamation cause after having gone to the expence of publishing depositions. Tea-dealing, according to Pinchbeck, was the most genteel line of provisioning: *Women Workers*, p.295. William Whittle was listed as a grocer and tea-dealer in High St. in a commercial directory of 1822-23 (Cox, ed., 'Ilchester References', p.169). The Wests mentioned generally followed less illustrious trades and included boot and shoemakers as well as an innkeeper (*ibid.*, p.169 and Cox, ed. 'An Ilchester Directory of 1840', p.113).

<sup>38</sup>pow v. Osborn, D/D/Ca 452(1832) and D/D/C (1832). Jane Pow was probably in court again in 1836, this time for defaming Jane Bartholomew of Lyncombe and Widcombe: Bartholomew v. Pow, D/D/Ca 454 (1836). Pierce Egan described Weston as a village 'occupied by numerous laundresses' and on one of his walks in the neighbourhood discovered the following sign posted by the Overseers: "TAKE NOTICE, the idle and disorderly of every sort and kind, found wandering in and about Weston, will be dealt with according to the law". Even Egan had the perspicacity to suspect that this did not apply to 'the numerous gentlemen idlers with which Bath always abounds': Egan, *Walks through Bath*, pp.186;188.

Another widowed publican, Jane Toft, intervened less successfully in an argument 'about the reckoning and paying for a Quart of Beer' between a servant, Elizabeth Rendall, and two yeomen on a Monday evening in 1829.<sup>39</sup> Mrs. Toft left the parlour of the Blue Bowl in Compton Martin, where she had been sitting with one of her servants, when she heard Alexander Currell tell Rendall that her mistress was 'a damned bad one and all her Family for neither of them bore a good Character'. Back in the parlour, Eliza Sage heard Currell and her Mistress 'say something about each others Character' and heard Currell use such phrases as 'Moll in the Wad' and 'A great Squab' and she heard Currell use a vulgar expression, which turned out, under closer questioning, to be 'fuck her'. Only Rendall, present throughout and her mind sharpened by the insults she had already received, provided more solid evidence:

she told her Mistress what Currell had said of her, and her Family...and her Mistress said that he...might say what he pleased about her but let him say what he would of her Family, he could not say anything worse of them than he could of his own.

Currell replied, according to Rendall:

if you want a Character go to Bob Davies of Wells and he will give thee a Character, and then added, Mr. Davies told Mr. James that he must come in and fuck thee before he could do anything with thee, and it was what he had done many times.

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<sup>39</sup>Toft v. Currell, D/D/Ca 452(1829) and D/D/C (1829).

Toft's cause went against her, probably because of the vagueness of Sage's evidence, but the judge expressed his disapproval of Currell's behaviour by awarding him nominal costs of 5s.<sup>40</sup>

Female publicans were often forced to devise ways short of physical violence to evict abusive customers. Jane Toft went so far as to put on her cap and hat and re-enter her establishment by another door in order to convince Currell and his companion, Thomas Wookey, that she had not heard their insults. When James West the younger tried to strike Mary Whittle, she 'told him he had better go home for she would not have a Noise in the House'. Mary Hollister who, with her husband, rented a public house in Ashwick from John Gould, quarreled with her landlord when Gould told her 'that her Father who is a Mason had cheated him in building up a fire place'. A

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<sup>40</sup>Thomas Wookey did not sit quietly during the quarrel, but called Rendall a whore, to which he confessed in court: Rendall v. Wookey, D/D/Ca 452 (1829). Mrs. Toft's proctor tried to save the cause by calling another witness, a twenty-four-year-old yeoman who had been present during the incident, but he was as linguistically vague as Sage. Samuel Fowler supposed that Currell had 'used an expression to this effect-namely-that Bob Davies had shagg'd her and could again; that he (Davies) had told Mullings so, and that he could do the same, and then he could do what he had a mind to with her'. Both Rendall and Sage, like most servants, had moved on to other employment (in Wiltshire and Wells, respectively) at the end of September, and had to be called back to depose.

neighbour found 'Gould and Hollister's Wife...at high words and during their Quarrel and Dispute...he heard ...Gould call Hollister's wife Whore upon which she made up to him in order to turn him out of Doors'.<sup>41</sup>

Elizabeth Hinton, the wife of Samuel, an inn-keeper, was working alone one night while her husband visited down the street.<sup>42</sup> Samuel French, a painter who lodged in the Hintons' inn, was sitting in the bar with a traveller when James Pearce entered. He

asked Mrs. Hinton...to draw some Beer, which she refused saying it was too late and she should not draw any more that night, but if he would call the next day she would draw him as much as he pleased; he...said he would have some, and that he had as much right to

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<sup>41</sup>Hollister and Hollister v. Gould, D/D/Ca 430,431,432(1767) and D/D/C (1767). The dispute between Mary Hollister and John Gould was not an isolated incident, and the defamation cause probably played a part in a legal strategy designed as much to harass Gould as to defend Mary Hollister's name. The Hollisters waited at least a year before prosecuting Gould, which suggests that they resurrected the insult at an opportune moment. The judge decided against the plaintiffs, perhaps taking the delay into account, and Hollister was excommunicated for failing to pay costs. He waited another year to seek absolution, and less than a year after that the Hollisters were again embroiled with Gould, this time at Quarter Sessions. A true bill was found against John Gould the elder and John Gould the younger, both of Ashwick, for assaulting Mary Hollister on 9 April 1770: Q/SI 390 (Bruton, 1770).

<sup>42</sup>Hinton v. Pearce, D/D/Ca 452(1831) and D/D/C (1831). A Frome couple bearing the same names successfully prosecuted Charles and Ann Hoddinott, also of Frome, in the archidiaconal court for calling Elizabeth Hinton a whore; Hinton v. Hoddinott (Charles), Hoddinott (Ann), D/D/Ca 477 (1830).



have some as the others...and Mrs. Hinton...again refused him, and he...cursed her and said she was a damnation Whore, and that his Wife was a prudent Woman, she was neither puffed in nor out nor up by any Person; and she...asked him...if she ever was, and he replied..."Yes, damn thee, by Daniels".

Mrs. Hinton sent William Orchard, the ostler, to get his master 'and tell him to come home and stop the Row that Pearce...was kicking up'. Ordered out of the house by Hinton, Pearce said '"Mrs. Hinton you are kept by Mr. Daniels and Mr. Daniel do allow you so much a year"'. Another witness, who had come along with Mr. Hinton, heard Pearce say '"Thank God my Wife isn't Daniel's Whore"'. He knew the remark must have been addressed to Mrs. Hinton, as she was 'the only Female then present'.

Mary Hunt brought her case at Quarter Sessions because James Wilmott had not stopped at calling her 'Bitch and old Bawd and divers other Names' but had given her a black eye and had broken a window as well.<sup>43</sup> Bath Jem, as he was commonly known, had entered her house, the Talbot in Bedminster, in the afternoon while her husband was away. He found fault with the mug Ann Bevan, the servant, brought him, saying 'he was a Gentleman and would not drink out of it'. An exchange of

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<sup>43</sup>Q/SR 346 (Bruton, 1778): Examinations of Mary Hunt and Ann Bevan.

mugs did not satisfy him and Mary Hunt had to come out and tell him 'twas not worth his while to make words about the pint'. This provoked the name-calling, and words became blows after a dispute over the change of a half crown. Mary Hunt sent for 'two men who was at work in the Barn who took him into Custody' and gave her evidence before a magistrate the following day.

The adultery attributed to publicans' wives or the sexual activity of female publicans was of an aggravated kind: Jane Pow and Mary Hunt were guilty of procuring; Jane Toft was promiscuous; Elizabeth Hinton was mercenary. Indeed, the comparison James Pearce drew between his wife and Mrs. Hinton was not merely one between married women, but one between publicans' wives, for he, too, was an innkeeper, it a less successful one than Mr. Hinton, who did not have to supplement his earnings by working as a shoemaker. Sarah Viner, who kept the Blacking Bottle in the parish of St. Peter and Paul, Bath, with her husband, was accused of engaging in criminal conversation with Samuel Cox, the clerk of a club which met regularly at the pub.<sup>44</sup> Viner and her

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<sup>44</sup>Viner v. Clack, D/D/Ca 454(1836) and D/D/C (1835). Typically, the club is not further identified in the depositions, though members who deposed were. Samuel Cox was an ironfounder, aged 41 and born in Shropshire; Alfred Moxley, aged 36, was a tailor born in Monmouthshire. Like most of the city's artisanal population,

husband both asked Charles Clack to leave after he 'caused some disturbance with respect to the business of the Club', and when he refused

Mrs. Viner then asked him what he meant by talking to her as he had done, and Clack...said "So help me God, I caught you and Cox in the Act of Crim Con" upon which he, Deponent, remonstrated with Clack for using such words and he then said, "So help me God, she is a bloody Whore"...and on his (Defendant's) leaving the House, he [said] to Mr. Viner..."you had better put Horns on your Head, you old Fool".

Samuel Cox had ample time to observe the scene before he walked out in disgust. He heard Clack say:

"I wish my Hands" (which were at that time one in the other) "may never come apart any more if I did not see her, Mrs. Viner (...to whom he...pointed with his Finger) in the Act of 'Crim Con'"--upon which Mrs. Viner...was desired by her Husband to go down Stairs, she being much enraged by the expression and about to strike the Deft with a Poker, and as she was leaving the Room...Clack...said "Mrs. Viner you are offended with me because I caught you in your Nastiness with that Bugger" pointing his Finger at the same time to him the Deponent.

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they had spent much of their working lives in Bath. Benefit societies for male workers had been forming in the city since the mid-eighteenth century; women joined in 1803 when the First Bath Friendly Female Society was founded. By 1814, almost 6% of the population belonged to the twenty-nine existing associations: Neale, Bath, p.324.

Though William Laurence was taken to court for calling Elizabeth Chancellor of St. Peter and Paul a 'Gin drinking whore' (Chancellor v. Laurence, D/D/Ca 425(1755) and D/D/C (1756), opportunities for drinking in public were on the decline in Bath. The rising cost of licensing in the eighteenth century reduced the number of pubs from 176 in 1781 to 83 in 1799; in 1822, there were 132 pubs in the city, most tied to breweries: Ronald Wilcox, 'Bath Breweries in the Later Half of the Eighteenth Century' in Second North Somerset Miscellany, pp.29-30. (Neale, loc.cit., pp.45-6, gives slightly different figures for licensed alehouses, but the trend is the same).

The Viners, like other nineteenth-century litigants, probably did not limit their retaliation to the church courts. Though the cause was formally ended after Clack had performed penance and before costs were taxed, Clack had already sat out much of the litigation in Bath City Prison. He may have been imprisoned for a crime (such as assault) committed at the inauspicious club meeting.

Women who worked in pubs as servants or as pedlars were also at the mercy of male customers. Their reputations, more than those of the publicans, were held in low esteem and legal defence often proved difficult for them.<sup>45</sup> While the womanliness of publicans suffered from their association with liquor and with commerce, female pedlars were further damned by their poverty. Mr. Hornbeck, a former libertine described in Peregrine Pickle, does not trust the 'virtue and discretion' of the oyster wench he has made his wife; and the eponymous hero, having heard of 'her former life and conversation', concludes that, even in her married state, she is fair game for one of his escapades.<sup>46</sup> Subjected to the

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<sup>45</sup>peddling was the lowest rank of trade, and some branches were considered disreputable, but it was often taken up by labourers' wives to supplement inadequate wages: Pinchbeck, Women Workers, p.300.

<sup>46</sup>Tobias Smollett, The Adventures of Peregrine Pickle, the Dalguhurn Edition, 4 vols. (New York: George D. Sproul, 1908), 2:12. Public houses, at least in the

temptation of the bottle and earning their living among drunken men, it was argued in court that these women were without reputations to defend.

Martha Andrews, wife of William Nelson Andrews, was selling oysters in the Kings Arms Inn in Pensford on a Tuesday in March 1832.<sup>47</sup> She stopped in front of John Philip Adams, a man who had lived in the neighbourhood for many years. George Gould watched them from where he sat drinking:

It was in the Evening...after candles were lighted... Mr. Adams...and Martha Andrews...were there also, who were talking and laughing together, and shortly after... Martha Andrews came up to him...and asked him whether he heard what Mr. Adams said to her...she then told him that Mr. Adams had said..."Damn thy great Cunt when I fucked thee coming from Whitchurch in a Cart my Prick was nothing in thee" or words very like it, and added "How nice I could do him for that".

The combination of laughter, Adams's drunken state and Andrews's character--she was described by all the witnesses as a quarrelsome woman--led Gould and two other witnesses, one of whom admitted to 'drinking freely' before the incident occurred, to depose against the plaintiff who had cited them to court to speak in her favour.<sup>48</sup> A pedlar had more difficulty than a

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towns, were often centres of prostitution, with the female publican acting as a bawd to her employees.

<sup>47</sup>Andrews v. Adams, D/D/Ca 452,441(1832) and D/D/C (1832).

<sup>48</sup>The witnesses were so unwilling that at least two were imprisoned under writs de contumace capiendo.

publican's wife in summoning witnesses who could corroborate her story against that of a man styled 'Gentleman' in the court papers, and Andrews abandoned the cause prior to sentencing.<sup>49</sup> She failed to pay the costs awarded to Adams, and her contumacy was signified to Chancery on 25 June 1833.

If involvement in litigation is an index of quarrelsomeness, Martha Andrews was a quarrelsome woman and she was married to a quarrelsome man. Her sense of how she might 'do' Adams, and others, encompassed the legal alternatives offered by the common law courts and the church courts. Martha Meredith and Ann Smart otherwise Leakey charged Martha Andrews with assaulting them that same spring, and she in turn countersued Meredith. Andrews's husband, William, brought a suit at the same Sessions against John Philip Adams, who had assaulted him on 27 March, less than three weeks after

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All the witnesses were 19 or 20, far younger than the average witness, and included a cordwainer and a baker, longtime local residents and able to sign their names, and Henry otherwise Harry otherwise Edward Charles Hathaway ('he is called and answers to each of those Christian names and does not know by what name he was Christened'), an illiterate native labourer. If Andrews was a prostitute, these men, too young to marry, may have been her clients and she may have mistakenly counted on their loyalty or discretion when citing them to court.

<sup>49</sup>Adams called himself a gentleman at the ecclesiastical court, but in the assault cases brought up at Quarter Sessions (see below) he was identified as a horsedealer.

the incident in the pub. The jury did not find a true bill, and this failure at Quarter Sessions may have prompted the Andrewses to bring their action in the church court almost two months after Adams defamed Martha Andrews.<sup>50</sup>

Lest we assume that Adams was a drunken, rich man victimised by a scheming, quarrelsome woman of ill-repute (the quarrelsomeness, perhaps, associated with her knowledge of the legal protection available to her) it is necessary to look at a cause that came before the court two years earlier, in 1830.<sup>51</sup> The only papers of substance that survive are the libel and the interrogatories, which are enough to inform us that John Philip Adams of Publow (not, at this point, a 'Gentleman') defamed Ann, the wife of Richard Batten of Chelwood, on 15 May 1830 in Publow by saying, 'I have been to Bed to Ann Batten and have shagged her twice and have cut off Hair from her Cunt and here it is'. This assertion has the boastful Adams touch. Batten, who brought suit promptly, had the same difficulty as Martha Andrews in locating compliant witnesses and her cause foundered after two of the three men she cited were signified to Chancery. Adams's proctor was ready, nonetheless, with a

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<sup>50</sup>Q/SI 452 (Easter, 1832).

<sup>51</sup>Batten v. Adams, D/D/Ca 452 (1830) and D/D/C (1830).

series of interrogatories designed to prove that Batten was a woman without a reputation to defend.

The pub was not the only arena in which men and women engaged in struggles over power and authority that sometimes found expression in sexual slander. Concern with property and especially with land is perhaps the most familiar aspect of the society revealed in eighteenth-century defamation causes, and trespass in that century, and contention over other forms of property in the years that followed, created situations in which men defamed their female adversaries and women took the men who slandered them to court.<sup>52</sup> Sexual insult could be used here, as it was in pubs, to diminish the authority of women whose activities brought them into conflict with men; litigation was used both defensively, to protect material prospects, and offensively, to punish offenders by entangling them in the sometimes costly legal process.

Grace Clarke described 'going to milking the cows' with her brother Thomas in a field which belonged to her

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<sup>52</sup>Defamation in such situations was not an exclusively cross-gender activity. See, for instance, the series of causes involving Joan Ellis and a collection of female adversaries that grew out of the rampaging of Ellis's pig. The depositions, taken from Ellis's two daughters, provide particularly graphic accounts of the sorts of sounds and gestures that accompanied defamatory words: *Ellis v. Somers, Michell, Ellis*, D/D/Ca 452(1829) and D/D/C (1829); and *Somers v. Ellis*, D/D/Ca 452(1829).



mother 'about milking time in the afternoon' in September 1744.<sup>53</sup> A dispute arose between her uncle, John Sealy, and her brother, 'concerning the road or path way in or through a Field or Ground belonging to...John Sealy lying in the parish of East Pennard, the Ground belonging to...[her] Mother and...Sealy lying close together only the Highway parts or divides the said Ground'. Sealy told Thomas Clarke that he was a 'son of a whore...that he would make a son of a whore of him', and it was Thomas's widowed mother, whose claim to the land led to the conflict, who brought suit in court.

Sarah Andrews, a spinster, owned land in Frome and she was a singlewoman of sufficient age and wealth to act on her own in court and out of it, as when she impounded the wayward sheep of James Pobjay, a malster. Indeed, it may be been her independence, financial and otherwise, that left her vulnerable to the attack described by John Singer, a near neighbour:<sup>54</sup>

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<sup>53</sup>Clarke v. Sealy, D/D/Ca 385B(1744) and D/D/Cd 134(1744).

<sup>54</sup>Andrews v. Pobjay, D/D/Ca 436,397(1782) and D/D/C (1782). Singer and three members of his family appeared as witnesses for Andrews. They continually draw attention to the difference in status between themselves and the plaintiff by their assiduous use of 'Miss', their descriptions of her suitor and possibly even when they say they 'very well know' her after what may have been only a year and a half of living closeby. This is the first cause in which titles appear regularly, and though Andrews and her suitor get them, as does Mrs. Newport, Pobjay, a sheep-owning malster, does not. The witnesses,

On the twenty-sixth day of March last past [1782] he was standing at the distance of about Eight Yards from...Miss Sarah Andrews's House when...James Pobjay came up to her Gate and talked to her concerning some Sheep that had trespassed on her land and which she had pounded and...James Pobjay wanting to have his Sheep out of the pound that Night and she refusing the same until a view had been taken of the damage they had done her...Pobjay pushed up towards...Miss Andrews who was standing at her Door and she telling him to stand off for that her House was her Castle...Pobjay then in a very passionate Manner told her that she was a hot-arsed Strumpet and had ten pounds a year for the use of her Tail and that she had had it for a great while to his knowledge and that she would even let the Dogs in the Street have the use of her tail.

James Stillman, Singer's father-in-law, 'was at work in his business of a shoemaker' that evening when 'loud talking' brought him to the door. Stillman, attentive to business details, heard Pobjay say

she was a nasty stinking hot arse creature and a nasty carrion and that it was her tail and arse that supported her and that she had been common for Years to his Knowledge and had a Bond of payment for so doing.

He heard the defendant's sister, Mrs. Newport, affirm that she had read the bond and he recalled that it was Pobjay's wife who 'persuaded him to go home seeing him in a very great Passion'.<sup>55</sup>

Ann Lisk, the thirty-seven-year-old wife of a labourer, intervened when she saw Esau Ellis and his wife

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at least, may have felt that he had forfeited their respect.

<sup>55</sup>Pobjay performed penance a year later in the vestry of Frome church, repeating every last defamatory word. It would tell us a great deal about attitudes towards propriety if we knew whether Sarah Andrews stood by and listened, as she was entitled to do.

beating their common neighbour, Mary Whitcombe, before their house in North Load Street in Glastonbury.<sup>56</sup>

When Lisk pulled Esau Ellis away and 'begged him to be quiet', Ellis

in a very great passion said 'then why don't the damnation bitch of a Whore pay me what she do owe me' Deponent...told Ellis he must not kill her because she owed him money and that he must get it at a better fashion, shortly after which both...Ellis and his wife went into their own House and Deponent and...Whitcombe went into...Mary Whitcombe's House, and whilst Deponent was there...Mary Whitcombe told...Esau Ellis that she did not owe him anything upon which...Esau Ellis, looking at...Mary Whitcombe, said "you poverty-struck Whore poverty is in thy House and there shall always remain".

Sarah Bond, another neighbour, also

begged...Ellis to go into his own house which he refused to do and said "I'll not go in for the poverty-struck Whore" and added that Poverty was in her House and there should always remain...he said "Thee art a Whore and I'll prove thee a Whore"... Whitcombe went into her own House and shut the Door, which...Ellis burst open bawling out..."Come out, you whore, you pay me what thee dost owe me" and as often as...Whitcombe did shut her Door...Ellis did burst it open and repeat the same or the like words.

Where disputes over property had culminated in accusations of theft in earlier centuries, similar

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<sup>56</sup>Whitcombe v. Ellis, D/D/Ca 451(1824) and D/D/C (1824). Glastonbury, like Wells, was a town with many ties to the ecclesiastical establishment. The Prat family was based there and members included proctors in the church courts, the bishop's tithe lawyer (consulted by Parson Skinner) and at least one clergyman who held the livings of both St. John the Baptist and St. Benedict. Other family members, male and female, acted as tithe impropiators and were frequent litigants at Wells: Skinner, Journal, pp.166-68; Collinson, Somerset, 2:263-64; Phelps, Somerset, 1:508.

disputes in the eighteenth and nineteenth centuries took a rather different form. When men met face to face, as did John Sealy and Thomas Clarke, the words they exchanged may easily have included allegations of dishonesty and thievery--still important weapons in the arsenal of male insult--but the words upon which ecclesiastical suits were built were words of sexual abuse and related entirely, after the mid-eighteenth century, to female sexual misbehaviour. There is no evidence that the vocabulary of insult in such confrontations had adapted itself so radically to changes in law and jurisdiction, but the priority assigned to particular insults must have shifted among those who were aware of the litigious possibilities of words. Esau Ellis was most concerned to broadcast Mary Whitcombe's financial unreliability, but it was his repeated use of the word 'whore' that enabled her to take him to court.

This sort of flexibility insured that the verbal and legal contest between men and women was not entirely unequal. Women did not stand mutely by when they were defamed by men and could use both insulting language (though nothing as potent as the word 'whore') and litigation to challenge male adversaries. As less and less of the language used to defame men was judged actionable, women could take advantage of a provocative vocabulary of insult that not only went unpunished in court but might

also be used to elicit an actionable insult from a man. Mary Hollister was able to call John Gould an 'old grey headed Rogue' with impunity when he abused her in 1766. Sixty-five years later, Elizabeth Whittle admitted that her mother had called James West the younger a rogue during their dispute over payment for a quart of cider. West's proctor, in drawing this information from the fifteen-year-old girl, was suggesting that Mrs. Whittle had exploited her freedom to insult West in order to provoke him to defame her, thus establishing the basis for a suit.<sup>57</sup>

Two women prosecuted parish officials for defaming them in the course of performing their duties. Mary Palmer of Keinton Mandeville accused Robert Gibbons, a peace officer, of defaming her when he attempted to effect a distraint upon her husband's goods in 1819. Palmer locked herself in the house with the decoy sent to open her door, a seventeen-year-old stonecutter.<sup>58</sup> The

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<sup>57</sup>Hollister and Hollister v. Gould, D/D/Ca 430,431,432(1767) and D/D/C (1767); Whittle v. West, D/D/Ca 452(1831) and D/D/C (1831). Elizabeth, unlike her mother, could sign her name and her testimony combines the coherence of the literate with the detailed observation common to the depositions of minors. See the testimony of John Henry Dunn (Stevens v. Leturge, D/D/Ca 453(1831) and D/D/C (1831); William Davis Walsh (Squire v. Westropp, D/D/Ca 479(1810) and D/D/C (1810); and Robert Bird and George Holder (Biffin v. Lawley, D/D/Ca 441(1834) and D/D/C (1834).

<sup>58</sup>palmer v. Gibbons, D/D/C (1818). Keinton Mandeville, a small parish with a population of 349 in

frustrated Gibbons reportedly stood outside, threatening to kill his former accomplice, and shouting up at him, "come out", and "Palmer's coming and he'll play the Devil with thee" and "thous't been on three times, hasn't and going on the fourth she'll ride thee Tan". To Mrs. Palmer he said, "Mrs. Palmer let I come in a bit thou mightst be as well whore to me as thou art to any Body else". According to one witness, Mary Palmer had called Gibbons 'Blackguard Scoundrel' and other 'opprobrious names'.

Isabella Stroud claimed that the Overseer of the Poor at Meare had defamed her by suggesting that her illness, for which she sought relief, was occasioned by a miscarriage.<sup>59</sup> Stroud, a spinster and a servant to a gentleman farmer, was supported in court by her mother and two female neighbours. Her mother was afraid that

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1821, was known for its quarries and its fine stone houses. Most of the men in the parish were employed in quarrying: Phelps, Somerset, 1:472. Collinson, writing at the end of the eighteenth century, when the parish contained just thirty houses, described the local economy this way: 'There is only one pauper in the parish, most of the poor finding employment in the quarries and in husbandry. The women spin, and knit hose for the Glastonbury manufacture': Somerset, 2:78;80. As to this particular stonecutter's ambiguous involvement in Gibbons's scheme, it is possible that he willingly became a decoy in order to assist Mrs. Palmer in her struggle against the bailiff. Quarter Sessions records abound with examples of assaults and riots against bailiffs, tithingmen and constables.

<sup>59</sup>Stroud v. Churches, D/D/Ca 441(1834) and D/D/C (1834).

her daughter's character would be injured 'if people believed what...Mr. Churches said of her to be true'. Mary Moxey had leapt to Isabella's defence, declaring that '[S]he...had no more been in the family way than she...(Mary Moxey) was at present, and asked him how he could say so of her'. In her deposition she described Isabella as 'a sober honest and quiet Girl, and never gave her mind to any Man and is, as she...verily believes, a virtuous girl'.

Defamation litigation could be the revenge of the powerless on the powerful, the strategic retaliation of women who were sensitive to the legal openings created by sexual insult administered incidentally. But turning the tables did not always work and neither Mary Palmer nor Isabella Stroud brought their suits to a successful conclusion.

#### IV. Conclusion

We have uncovered some of the motives that led women to initiate defamation suits in the eighteenth and nineteenth centuries. Women went to Wells to defend their material and marital prospects, to settle feuds and disputes unrelated to reputation and to punish men who had harmed them in other ways. Some went of their own accord, others at the urging of husbands or employers. The legal process was flexible enough, and knowledge of

it sufficiently extensive, to enable women to construct suits around direct, deliberate sexual insults or around spontaneous slander that arose in the course of quarrels in which female honour was at most a subsidiary issue.

More specifically, work, commerce and property ownership had three important consequences for women that could make them peculiarly vulnerable to sexual insult and unusually good candidates for lengthy litigation at Wells. (These women, of course, would be more likely to have the money to finance a plenary suit.) First, it brought them into different relations with men than they might experience within the domestic sphere and required them to exercise their sometimes precarious authority over uncooperative male customers or clients. Second, increasingly measured against a standard of domesticated sexuality which may have had its roots in their earlier roles as wives, mothers and coworkers, and which was narrowed and reinforced in the late eighteenth and early nineteenth centuries by Evangelicals and others, these women could be called to order by defamatory words that tasked them for being less than womanly.<sup>60</sup> As long as female reputation was identified so completely with

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<sup>60</sup>Taylor, Eve and the New Jerusalem, pp.123-130, is particularly good on the contradictions inherent in the Evangelical definition of femininity. Spiritual equality and such quasi-egalitarian institutions as the companionate marriage did not sit well with female submissiveness and non-participation.



sexuality, an accusation of illicit sexual activity, notoriously difficult to disprove, could threaten a woman's livelihood or business, and she had to act decisively to clear her name and re-establish her femininity. For female publicans, the relation between maintaining the good credit of their business establishments--and their licences--seemed to be a close and uncomplicated one; the invariably public discomfort they suffered was expunged through litigation at Wells and their defamers were punished by the cost of legal proceedings and the humiliation, at least in the early period, of performing penance.<sup>61</sup> Finally, by bringing them closer to the cash nexus, work, commerce and ownership facilitated the condemnation of women as whores or bawds. The word 'whore' was a sturdy metaphor for it suggested, on the one hand, mercenary involvement in the sex trade, an exchange of sexual favours for money or other benefits; and on the other, it contained within it the threat of disruption to the institutions of marriage and property because the promiscuous wife squandered her husband's resources and jeopardised the

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<sup>61</sup>The relation between licensing and the reputations of individual drinksellers probably varied with changes in legislation and according to levels and methods of enforcement: Harrison, Drink and the Victorians, pp.61;73-74. Harrison does emphasise that publicans, male and female, were highly respected (pp.59;362). A tradeswoman intent on preserving her respectability would be quick to prosecute her defamer.

legitimacy of his issue. The ambiguous relationship of women to power and money and the telescoping of all aspects of female reputation into sexual reputation guaranteed that women whose economic activities took them outside the domestic sphere posed a challenge to men, a challenge that was not infrequently met with sexual slander.

In the end, it seems likely that the defamation jurisdiction in Somerset would have withered away far sooner, as it did in other dioceses, had it not been for two factors. The survival of traditional ideas about sexual reputation and its defence among a strata of the plebeian population of the county insured that sexual insults would continue to be broadcast and to be treated as serious threats to the maintenance of a good reputation. The persistence of these attitudes was possible in a region where change was neither uniform nor dramatic, where mobility, population growth, urbanisation and the reorganisation of modes of production were uneven. At the same time, the discomfort generated by a general shift in the definitions of sex roles and the specific alterations in the balance of power between the sexes wrought by the industrial and agricultural revolutions, found expression in confrontations between men and women over the validity of female authority. The partial survival of a plebeian sexual culture with its own rules

and priorities, and the social and economic change that was redefining the place and function of both men and women in the eighteenth and nineteenth centuries, guaranteed that the practise and punishment of defamation, despite official resistance, would persist into the middle of the nineteenth century.

## CHAPTER 7

## TRANSITIONS IN THE DEFINITION AND DEFENCE OF REPUTATION

I. Introduction

The definition of a good sexual reputation is inseparable from prevailing standards of sexual behaviour and through much of the early modern period the same institutions, popular and official, which protected one, enforced the other. This remained possible as long as sexuality was regarded as a public matter and as long as a consensus existed concerning the limits of acceptable sexual behaviour. The middle years of the eighteenth century, however, witnessed a change in attitudes toward sexuality and towards its regulation--as well as in sexual behaviour, as evinced by the rising rates of bastardy and prenuptial pregnancy--that undermined the comprehensive supervision of all aspects of sexual behaviour. By the final quarter of the century, the church courts had effected a complete withdrawal from the active detection and correction of such sexual offences as adultery, fornication and incest and the regulation of sexuality was increasingly seen as a problem of controlling the bastard-bearing of the poor. Official supervisory power shifted to local secular officials who were concerned mainly with the sexuality of poorer women; even conscientious clergymen

might shy away from correcting their local patrons.<sup>1</sup>

Popular regulatory mechanisms, from the charivari or skimmington to the ducking, the stoning or the riot persisted, and persisted in their claim to take into account the sexual misbehaviour of all classes, but there is ample evidence that they were already in decline as participants distanced themselves from these manifestations of a popular culture and officials took action against what they perceived as threats to public order.<sup>2</sup> A growing concern with propriety and respectability, initially among the upper classes and eventually among those members of the lower orders who wanted to set themselves apart from the unregenerate poor, contributed to the gradual sequestering of sexuality behind a wall of silence and assumed good behaviour. Insofar as that assumption required the

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<sup>1</sup>See, for instance, Parson Skinner's endless imbroglios with the Jarrett family in his Journal. James Woodforde, early on in his tenure at Norfolk, observes benignly that the local gentry appear at church with their mistresses. He only disapproved of 'one Sandall an oldish man a broken gentleman and who keeps a Mistress also tho he has a wife living': Diary, I: 204. This disapproval (which was not limited to sexual practise but included feelings about suitability that included age and status) would not have led Woodforde to consider rebuking these men. On the contrary, three years later, in 1780, he got in trouble with the squire for allowing the mistresses of these men to sit in the rector's seat, but Woodforde dismisses the Squire's interest as the result of a family feud: 1:282.

<sup>2</sup>Edward Phelips, when he built his Hall at Montacute in the late sixteenth century, could still include a plasterwork panel depicting a skimmington provoked by a wife beating her husband: Bettey, Wessex, p. 127 (description of photograph).

maintenance of a good reputation, disputes over sexual reputation became an important, if oblique, means of regulating sexuality. For as a private matter, and where it entailed no obvious financial burden to a community, sexuality had become far less susceptible to external supervision--institutional or popularly organised--in 1850 than it had been 150 years before.

Defamation litigation is particularly useful in penetrating this silence and in recording the small accommodations along the way to the establishment of a new consensus. Many of these accommodations were arrived at and disseminated through the medium of gossip, which served a clear regulatory function in this relatively unsupervised society. Divergences between popular and official attitudes were rife--the church courts had long ceased to punish couples whose first child came too soon after the wedding, and pregnancy followed by marriage was generally tolerated, but the allegation of prenuptial conception was still a perjorative one in eighteenth-century defamatory language--and could be exploited by those who wished to use the formal power of the court to combat the informal arbitration of social behaviour embodied in sexual insult and gossip.<sup>3</sup>

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<sup>3</sup>In *Newton v. Pinkard*, D/D/Ca 427, 428 (1762) and D/D/C (1762) the accusation that Jane Newton was pregnant before her marriage is repeated by witnesses but was not even incorporated into the libel. Prenuptial pregnancy was abolished as an offence by a statute of 1787.

Significantly, Betty Tutton and Susan Dorney, the young women the defence of whose reputations forms the subject of this chapter, were spinsters and their presence at Wells necessarily shifts our focus away from the more common issue of adultery towards those relating to the sexuality of young adults. It does not, however, remove us from the realm of gender relations, because foremost among these issues was the control of sexual activity within a context of courtship and eventual marriage. Courtship and the sexuality of the young had long been subject to popular regulation and it is the failure of this regulation that increasingly finds its way into the legal records of the eighteenth and nineteenth centuries. As Quaife points out, in seventeenth-century Somerset parochial officials concerned themselves with the potentially disruptive, 'the adulterous wife, the predatory widow, the vagrant whore and the violent lecher', and successfully left the supervision of the sexuality of the young to villagers who were ready enough to spy on local spinsters and courting couples and take action, official or not, when necessary.<sup>4</sup> Though the church courts had drastically curtailed their prosecution of sexual offenders by the time Betty Tutton brought suit,

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<sup>4</sup>Quaife, Wanton Wenches, p. 50. Bastardy, of course, was far less prevalent in this period and Quaife identifies the years between 1600 and 1660 as a period of very limited prenuptial conception and therefore unusually restrained premarital sexuality (p. 58).

and local poor law officers, whose brief was defined by a fear of the economic consequences of bastard-bearing, had shifted their attention to specific groups of unmarried women, most young people continued to be subject to some forms of communal and familial supervision. This supervision was not consistent in its aims or its methods, and the tension between popular and official, formal and informal regulation is a major theme in each of these accounts.

The erosion of a consensus on sexuality took place at a time when alterations in material conditions challenged older, unitary definitions of good reputation. For Susan Dorney, geographical mobility and the miscellany of occupations and social relations that characterised her life made nonsense of the concept of common fame. Many of the witnesses in her cause make it clear that their interest in her reputation extended no further than its bearing on her fitness to undertake a particular task. Just as new definitions of male reputation had excluded male plaintiffs from Wells Court in the eighteenth century, definitions of female reputation as closely related to immediate circumstances as those offered by Susan Dorney's neighbours were difficult to defend in the church courts and their widespread acceptance in the nineteenth century made the survival of the defamation jurisdiction increasingly precarious.



## II. Betty Tutton and the Southover Revel, 1784

The following pair of causes, which arose from the public reading of a statement condemning the immorality of Betty Tutton at a mock court that was a traditional part of a revel, reveal the imperfect fit of two late eighteenth-century worlds, one popular and one official, and the way in which Tutton, the offended party, was able to turn the official authority of the church court on the popular authority of the communal tribunal. Betty Tutton's ability to challenge popular authority owed something to the decline of revels and fairs in this period.<sup>5</sup> In rural areas, enclosure and depopulation forced the discontinuation of these festivities, while in towns authorities were banning them on the ground that they were disorderly and encouraged vice amongst 'the lowest class of people'.<sup>6</sup> In parishes where popular festivities had been appropriated by local magnates to shore up their authority,

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<sup>5</sup>A similar phenomenon is visible in the seventeenth century, when revels were periodically banned as threats to political stability and people brought defamation suits against perpetrators of popular punishments: Quaife, Wanton Wenches, pp. 86; 199.

<sup>6</sup>The revel at Puxton ended in 1811 when the ancient system for dividing common fields on Dolmoors was discontinued by enclosure: Knight, Seaboard of Mendip, p. 233. The revel at Culbone, held in the churchyard, had disappeared by 1821 when only eleven families remained in the parish: Savage, Carhampton, pp. 78-9. For the announcement by the magistrates of the Bathforum division, published in the local papers in 1776 as part of their campaign to suppress popular festivities (from which the quotation is taken), see Bettey, Wessex, p. 100.

the revel had a better chance of survival, though in truncated form.<sup>7</sup> The content of fairs, too, was losing its broad appeal. Entertainments and amusements that had been popular in the early eighteenth century, and which had attracted people of all classes and ages to local fairs, were rejected, first by the upper classes and eventually by the respectable poor. Women prize fighters ran afoul of new definitions of femininity and puppet shows failed to cross the newly-erected boundary between adult and child entertainment.<sup>8</sup> Public amusements continued into the nineteenth century (cocks fought and badgers were baited in the public square at Axbridge, the scene of Susan Dorney's seduction, at least until 1825), but were manifestations of a popular culture increasingly defined by class.<sup>9</sup>

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<sup>7</sup>For an example of such a revel, held in Wincanton in 1798, see N&Q for S&D, 28 (1968): 229. Both the broadsheet advertising this (the Penn Feast) and the description of the Langford Budville revel, terminated by the churchwardens in the mid-nineteenth century (N&Q for S&D, 20 (1930-32): 245-46) illustrate the kinds of entertainments available at these events.

<sup>8</sup>Ads for female boxing matches appear in the early eighteenth-century press: Latimer, Annals, p. 168. The death, in 1775, of the wife of the drummer at the puppet show in Axbridge is noted by Knight in Heart of Mendip, p. 400. Parson Woodforde was still enjoying bear-baitings, sheepshearings and the visits of transvestite players around this time: Diary, 1: 12; 20; 58. For the withdrawal from popular culture, see Peter Burke, Popular Culture in Early Modern Europe (London: Temple Smith, 1979), espec. Chap. 9.

<sup>9</sup>Knight, Heart of Mendip, p. 372. The anniversary of the Gunpowder plot, marked by a civic holiday and a church service in the town, was accompanied by bull-

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Wells, the seat of the church court, the day after Wells fair.<sup>10</sup> People gathered at the pound in the evening and a mayor, a town clerk, a justice and a recorder read out 'bills of indictment' submitted to them. In 1784, a bill was read accusing Betty Tutton, a spinster of Wells, of 'having been guilty of the Crime of Adultery or Fornication with Joseph Lovell a Jockey'. The paper, entered as an exhibit in the cause, is written in a large hand, the spelling uncertain:

A True Bill Against Jos Lovell  
 Jockey for trying to  
 knock Betty  
 Tutton in Her Shoes and he could  
 not for the Fidlers playing of  
 Willhis's Ridle to them  
 And Broke  
 her Navel Strang<sup>11</sup> and Let her Cunt

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baiting into the nineteenth century (p. 371). Axbridge had, however, lost at least one of its four fairs before the end of the eighteenth century (pp. 370-71).

<sup>10</sup>Tutton v. Atwell alias Wills, D/D/Ca 397 (1784); and D/D/C (1784); and Tutton v. Lovell, D/D/Ca 397 (1784) and D/D/C (1784). Phelps described Southover as a long street of 'mean houses': Somerset, 2: 16. Fairs were held at Wells on 14 May, the Wednesday and Thursday in Whit week, 6 July (the fair referred to in this instance), 21 August, 25 October and 30 November (p. 17).

<sup>11</sup>Robert A. Erickson, "'The books of generation': some observations on the style of the British midwife books, 1671-1764" in Sexuality in Eighteenth-Century Britain, p. 80, notes that Jane Sharp, in her midwifery book, accepts 'the old midwives' notion . . . of parity between the length of the umbilicus when cut and the size and operation of the privy members'. He goes on to quote Sharp on the dangers involved in cutting navel strings; a short string in a girl baby could hinder her childbearing capacity. The libel suggests a popular belief in a physical connection between the umbilicus and the genitals, but the specific inferences to be drawn from Tutton's calamity are obscure.

About her heels  
 A True Bill Against Elizabeth  
 Tutton for promising  
 Marriage But the Man  
 knowing Sence would not  
 Untill he had Handled her premises  
 which he did in Wookey Church  
 Church Porch

As a text the bill of indictment raises many more questions than it answers. Many of the allusions are obscure. Is 'Willhis's Ridle' something more than a popular tune? Does 'jockey' refer to Lovell's trade (a dealer in horses), his size or his cunning (trying to knock Betty in her shoes)? Is he the same person as the sensible man? More importantly, it is difficult to determine which behaviour is being condemned, and for what reasons. Though the indictment names Lovell and Tutton as offenders, Lovell's criticism was self-imposed--he had written the bill--and the crowd interpreted the document as a slight on Tutton's reputation. Was it Betty's availability to Lovell, and to the sensible man, or was it her unwomanly behaviour in being willing but initially inaccessible to Lovell and then appearing to take the initiative in proposing marriage--for though she promised marriage, the man proposed, at best, conditionally--that was under attack? As a commentary on current sexual practise, the bill is possibly even more obscure. The sensible man is congratulated for his good sense on insisting that he try Tutton before he marries her, but was the author proposing this as a general, even an accepted, practise, or was he

merely pointing out the necessity of such precautions in Tutton's case? As to male sexual behaviour, Lovell indicts himself for his sexual failure, for which Tutton bears the ultimate responsibility, rather than his illicit activities. While the author does not seem to have any qualms about condoning male sexual activity, his assessment of acceptable female behaviour is confused--the result, perhaps, of an age in which standards of sexual behaviour for unmarried and courting women were in flux.

The four witnesses called by Tutton tell different stories, in the manner of most witnesses deposing about the same event, but none of them elucidate the contents of the libel. Instead, their attitudes toward the revel, toward Tutton's reputation and even toward time unearth a deeper level of conflict between the modern and the traditional, the polite and the popular.

William Thomas, aged 22 and upwards, a resident of Wells 'where he was born and has chiefly lived', deposed first.

Last Southover Revel but on what day or in what Month the same was held he cannot now recollect he was in company with...Joseph Lovell and two or three other persons at a private House in Southover...and wherein Liquor on account of the Revel was then sold and as he and...Lovell and others were drinking together he saw ...Lovell writing on a piece of paper and after he had finished the same one John Tucker then took it up to read and this Defendant [sic] looking over...Tucker's shoulder read some of the words thereof but did not read it all...he and his companions being all very merry drinking together and soon after all of them going into the street and to the Pound where the Mayor of Southover and a great many persons with him were assembled to expose all loose disorderly persons be-

longing to the Town according to an old annual Custom which has been kept time out of mind as this Deponent has been informed and believes...the Paper...was...delivered...to one Horner the Mayor who immediately read it aloud in the...Pound together with some other papers of a like nature and this Deponent being suspected to be the author thereof by some of the Plaintiff's Relations they directly abused him very much for it and throwing Stones at him he was in order to pacify them obliged to inform them who it was that wrote the...paper.

Thomas was able to identify the paper, 'there being several words therein at the bottom which this Deponent remembers to have read whilst drinking with the Defendant', but he could not say if Lovell wrote it, 'he being not acquainted with...Lovell's hand writing'. As to the plaintiff, he had been 'often in [her] company but knows of no harm in her nor has he heard of any nor does he know whether her Character is injured...tho' he says that people have talked about it One to another'.

Thomas, suspected of being the culprit (perhaps because of all that time he spent with Tutton), was still very much a part of the popular world. He is forgetful of specific dates and 'merry' whilst drinking. He does not question the legitimacy of the Mayor of Southover, the antiquity of the revel, or the solemnity of its purpose. John Tucker, whom he identified among the drinkers, was already distancing himself from this world. A twenty-three-year-old shoemaker, residing in the parish of St. Cuthbert's in Wells, 'where he was born and bred', his testimony is more precise and less forgiving. Tucker, unlike Thomas, did not appear voluntarily.

It is customary to keep a Revel in Southover the day after Wells fair in the month of May or June and for a person they call the Town Clerk to read in the pound in Southover such papers as are thrown therein which are generally called Bills of indictment and relate to debauchery and...at the last Southover Revel as he was returning from Haymaking in company with the Defendant he the Defendant as they were going down was called into the house of a Woman that now goes by the name of Eades and in about of a quarter of an hour afterwards this Deponent observing several persons go into the...House went into also and there saw a paper handed about to the people present and this Deponent...read part if not all of it and then William Thomas took the...paper out of this Deponents Hand but what he did with the same this Deponent knows not And whilst the...paper was so handed about he heard Mr. Horner who acts as the Town Clerk at the Revel say that he wou'd not publish that paper unless he was paid for it and...saith that having viewed and perused [the paper]...he cannot be certain [that it was the same] he read in the House of Mrs. Eades altho' he remembers that in the paper he at that time read there was contained words to the purport of the latter part thereof but none as he believes so vulgar as those in the Sixth and Seventh lines...nor does he recollect or believe that the word Jockey was therein.<sup>12</sup>

Turner did not know if the paper was read,

he leaving...Eades's House and not going to the Court or pound or being near the Mob that Evening And...next morning he heard that there were papers dropt concerning Betty Tutton...whose character...is the same as any other common Tradesperson's Daughter he having never heard much to her injury nor to her praise.

Samuel Atwell alias Wills was cited into court by Elizabeth Tutton on the same day as Joseph Lovell. After an initial denial, he confessed to publishing the words, performed penance in the vestry of St. Cuthbert's church on 31 July 1784 and paid costs of £1 5s. Od. He declined

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<sup>12</sup>The words 'Jockey' and 'and Let her Cunt about her heels' were clearly added, if not by another hand (and the writing looks slightly different, but may have been altered by drink), after the bill was first written.



to appear voluntarily against Lovell and was cited by compulsory in December 1784. The forty-five-year-old resident of Southover, 'where he has lived for 18 or 20 years last past born in the parish of St. Cuthbert' arrived late at the Cathedral on the day he was to be sworn and disappeared for a further session or two before giving his deposition:

On the Sixth day of July last past he attended in the pound in Southover in Wells...as Town Clerk that he then read several papers called Bills of Indictment and amongst the rest one concerning...Elizabeth Tutton but being himself then rather in Liquor he cannot say whether it was anything tending to defame her or not...[he cannot identify the paper] he not having had the custody of the same since that time or the Day after at farthest but...on being cited into this Court to answer...Elizabeth Tutton in a cause of defamation he acknowledged to have published a certain paper in the pound at Southover...respecting...Elizabeth Tutton merely because he wou'd not have any litigation with her.

Mary Eades, named in the same compulsory with James Taylor, a baker, and Richard Prince, a woolcomber (both of whom, though sworn, were never examined) gave her deposition in February. Eades, the wife of John, gave her age as 'about thirty-three' and, like all the witnesses, her residence as Wells, 'where she was born and has mostly lived'. She did not attend the revel, but her deposition emanates from the popular world of which it was a part:<sup>13</sup>

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<sup>13</sup>Eades, unlike her fellow witnesses, could not sign her name. The right to set up temporary alehouses at the time of fairs and festivals was not curtailed until 1874: Harrison, Drink and the Victorians, p. 55.

On St. Tibb's Day there is annually held a revel in Southover...and for many years past as long as this Deponent can remember it has been usual for the People to hold a Court in the pound and to have a Mayor Justice Recorder and Town Clerk to call over the names of persons that have been lewd whether gentle or simple and this Deponent has heard many old people say that it has been a custom so to do time out of mind and at the last Southover Revel this Deponent sold Ale on account thereof and in her House were then present...Joseph Lovell and many others drinking and sometime in the afternoon there was a paper wrote but by whom she cannot say called a Bill of Indictment which this Deponent heard from the plaintiff's Brother soon after had been read in the Court and that his Sister had been called over therein and a quarrel ensued concerning it and fighting like to have happened.

Mary Eades was unable to identify the paper 'she not being able to read writing but...she is certain she never heard the...paper read in her House or elsewhere nor does she know whether the plaintiff's Character be injured by it or not'.

The cause was ended abruptly by the plaintiff's proctor in March 1785, prior to sentencing. Perhaps a settlement had been reached, or perhaps Betty Tutton had rendered the outcome inconsequential by following up that promise of marriage. Two other causes reported in the Act books in July 1784 may have been protests against the revel, though there is no indication that the defamatory words had been written down. Thomas Anney, a plasterer and tiler of Wells, denied saying 'he had seen Sarah Phillips knocked under a Gooseberry Bush in Robert Westcott's garden for 6d'. Sarah Goater confessed to calling Ann Westcott 'whore and Mr. Lax's long-nosed whore', and though this does not have the flavour of the bill of indictment, and

the defendant was in this case a woman, Ann Westcott was the daughter of a Robert Westcott, who may have been implicated, in the shape of his garden, in the preceding cause.<sup>14</sup> It is impossible to identify other Wells causes with the Southover revel with any certainty. There are many over the years that commence at the proper time, but they were either ended before the defamatory words were transcribed, or the words have the sound of insults shouted in the street. If 1784 marked the first year in which victims of the Southover court carried their grievances across town to the church court, then that year may well have marked the decline of that popular institution.

One of the most striking features of this ancient customary court, situated in the cathedral town of Wells, was that it was modelled not on the church court but on the corporation and its borough court. Satirical elections of mock mayors and sham corporations were ubiquitous in the eighteenth century and, according to Corfield, 'paid an inverse tribute to municipal dignity'.<sup>15</sup> The

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<sup>14</sup>Phillipps v. Anney, D/D/Ca 397 (1784); Westcott v. Goater, D/D/Ca 397 (1784) and D/D/C (1784).

<sup>15</sup>Corfield, Towns, p. 149. In Bath, the Corporation exercised 'a paternal function in looking after its own'. It controlled production, regulated trade and labour and maintained the poor, the sick, the old and the illegitimate: Neale, Bath, p. 175. The municipal government of Wells included a mayor, a recorder, seven masters, a common clerk and sixteen common councilmen: Collinson, Somerset 3:376. For another local example of a sham corporation see Latimer, Annals, pp. 269-70.

jurisdictional relationship between popular and official tribunals is not entirely clear--the borough courts did entertain cases involving bastardy and domestic violence--but it is easy to imagine that popular courts adapted themselves to circumstances and considered those crimes and criminals that went unpunished elsewhere. Lewdness was, in the eighteenth century, an area which, while remaining disruptive, could and did escape the detection and discipline of the established courts. The sexuality of young, unmarried persons was likewise ignored by the church courts and received official notice, mainly in connection with bastardy, only in the common law courts. The sexuality of dependants was regulated to some degree by a parent or household head, but popular tribunals, some less formal than the court at Southover, may have extended their supervision to this neglected group.<sup>16</sup> The defamation of spinsters was rarely prosecuted in the church courts unless extraordinary factors, such as impending marriage or the pressure of employers, intervened. Yet Elizabeth Tutton, Sarah Phillips and Ann Westcott were all spinsters and if they brought their causes in the wake of accusations made at the Southover court, it may indicate that the sexual misbehaviour of the young formed an important part of the

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<sup>16</sup>For the regulation of children and servants by the household head, see Peter Laslett, The World We Have Lost, 2nd ed. (London: Methuen and Company Limited, 1971), Chapter 1.

business of such tribunals. It is in courts such as these, and in the charivaris and other ritual activities of the community, that we glimpse the outlines, and occasionally the minutiae, of a plebeian sexual culture that was more than a simple reflection of the dominant sexual culture. And it is in this particular incident that we may be witnessing the dismantling of an internal system of regulation that had once belonged to an entire community, 'both gentle and simple'. That community was undergoing a further fracture as 'respectable' artisans such as John Turner dissociated themselves from the courts' activities and tradespeople such as the Tuttons, when they took exception to what they heard at Southover, sought redress in the ecclesiastical court across town.

### III. Susan Dorney, 1832

The step into marriage, despite its centrality to production and reproduction, is one that is often obscured, leaving behind no more than a mark or a signature in a register. That the step did not always go uncontested, and that communal opinion was active in regulating the choice of marriage partners, is illustrated by the preceding cause and by those incidents in which collective responsibility for sexual and conjugal behaviour was exercised through organised communal rituals or through gossip that was subsequently construed as defamatory. This responsibility did not repose in women alone (one of the few charivaris to

find its way into the criminal records of the county was allegedly led by a man), but it is worth noting that in defamation causes that revolve explicitly around the issues of the formation of marriage and childbearing the plaintiffs, the defendants and frequently the witnesses are predominantly women.<sup>17</sup>

There is some evidence, however, that gossip retailed before mixed audiences or insults broadcast in public had a more immediate impact on the lives of the individuals defamed than did this informal female supervision of marriage and reproduction.<sup>18</sup> In the

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<sup>17</sup>For the charivari, see ASSI 23/8/pt. 2 (Lent, 1796) and Q/SI 415 (Wells, 1795). In *Burrow v. Sheppard*, D/D/Ca 397 (1786) and D/D/C (1786), Hannah Burrow contended that Elizabeth Sheppard 'did go about to her Neighbours in a sly private and clandestine manner and did also openly and publicly in the face of the Country...declare...Hannah Burrow was breeding by John Fry'. Sheppard had married Fry by the time the suit began, and Burrow was unable to induce the witnesses, both related to Fry, to acknowledge that Sheppard had defamed her. In *Newton v. Pinkard*, D/D/Ca 427, 428 (1762) and D/D/C (1762) the unmarried Pinkard who, it was claimed by one witness, had 'kept company' with Robert Newton for as long as sixteen years, was prosecuted for repeatedly defaming his wife, Jane.

Women may have been more receptive auditors than men, because the formation and continuation of marriage was more important to their survival and because female moral laxity produced a corporate anxiety and crisis of identification. Or they may have been the natural audience created by a sexual division of labour and leisure.

<sup>18</sup>Sarah Andrews (*Andrews v. Pobjay*, D/D/Ca 436, 397 (1782) and D/D/C (1782)) and Betsy Walter (*Walter v. Taylor*, D/D/C (1817)) were defamed before mixed audiences and may not have succeeded in marrying their men; Molly Collins (*Collins v. Bateman*, D/D/Ca 449, 450 (1758) and D/D/C (1758)) was defamed before women and was married.

cause that follows the initial words are spoken by one woman to another, not as gossip, but as accusation. They are not directly concerned with marriage or reproduction, but the ensuing litigation unearths a series of events, including a false step toward marriage and the birth of a bastard, that undoubtedly affected the way in which the accusation was heard by the plaintiff, her family and the widening circle of witnesses drawn into the cause.

When Susan Dorney went with her sister Mary Ann to John Webb's shop on 29 October 1832, she realised that something had occurred to disrupt the bonds that united the two families.<sup>19</sup> Though she went on a routine errand, to buy bread, the dispute that followed had nothing to do with Susan Dorney's role as a customer or Mary Webb's role as a shopkeeper. The defamatory words used on this occasion by John Webb's wife led to a lengthy and complicated cause. Thirteen witnesses were examined, and from their depositions we can piece together a series of pictures of rural life: a life built upon the interdependence of families and loyalties within families; a life of women's work and courtship and childbearing; and a life of young adult sexuality, with its concomitants, venereal disease and bastardy. Most importantly this

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<sup>19</sup>Dorney v. Webb, D/D/Ca 452, 441, 454 (1832) and D/D/C (1832).

material forces us to consider the complexities of reputation and to reevaluate the meaning of female sexual reputation. For Susan Dorney had borne a bastard about a year and a half before Mary Webb turned on her, and though this complicated her efforts to restore her good name, a good name, it was argued, she had.

Both Dorney and Webb resided in Chew Magna, a parish that in 1831, the year before the suit commenced, had a population of 2048, which puts it among the larger parishes in the county. Dorney was the daughter of a turnpike gatekeeper, and she divided her time between a series of employments.<sup>20</sup> John Webb was a baker and Mary Webb assisted him in his shop. The name of the Webb family, and possibly of this John Webb, appears frequently in the Highway Rate Book of 1837-8 and in the survey of the parish carried out by order of the Poor Law Guardians in 1838; the Webbs owned a considerable amount of property in Chew Magna. The Dorney name appears instead in the Poor Accounts, where the weekly payments for Susan's child are

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<sup>20</sup>Individual and collective resistance to turnpiking cast tollgatherers as the recipients of a great deal of violence. See, for example, Q/SI 378 (Wells I, 1758): a yeoman of Chew Magna is charged with assaulting a Bedminster turnpike gatekeeper; and Q/SI 426 (Wells II, 1806): a yeoman of Ilminster assaults Sarah Scriven, a female gatekeeper. The Dorneys, however, do not seem to have been stigmatised by their calling; turnpikes had long been a familiar sight in that part of the country.



recorded.<sup>21</sup> The Dorney family had moved to the parish less than two years before the events of late October, 1832, after spending nine months collecting tolls at Axbridge, a small market town less than fifteen miles distant. Their whereabouts between the birth of Mary Ann, eighteen years previously, at Winscombe, and their arrival in Axbridge are uncertain. Just as Dorney called her sister as a witness, Webb called two of her stepchildren, both of whom had been born in nearby Bristol and had moved to Chew Magna within the last fifteen years. Four of the witnesses claimed to have lived constantly in their parish of residence, and a further two had returned

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<sup>21</sup>Highway Rate Book D/P/che.m. 14/2/1; Survey of Chew Magna D/P/che.m. 13/1/63; Poor Accounts 1831-1836 D/P/che.m. 13/2/5. It is difficult to determine the social status of the Dorney family. Gatekeepers were either appointed by the turnpike trustees and paid a salary or they leased the tolls for a period of time for a fixed sum paid to the trustees. Hired gatekeepers were drawn from the 'same general occupations': mainly very small artisans and upper servants. Wages in the late eighteenth century, outside London were between 5s. and 7s. a week (a standard labourer's wage), but were supplemented by such perquisites as rent-free houses, candles, fuel and bedding. Women were frequently hired as collectors, and widows could succeed to their husband's posts: William Albert, The Turnpike Road System in England 1663-1840 (Cambridge: At the University Press, 1972), pp. 83-5. The absence of the Dorneys from the rate books is not necessarily indicative of their poverty, because gatekeepers and lessees who resided in the toll houses were exempt from poor or other rates. Gatekeepers gained no settlement in the parish they worked in, nor were they removable under the settlement laws unless they became chargeable: Richard Burn, The Justice of the Peace and Parish Officer. 4 vols., 12th ed. (London: T. Cadell,

to live at Chew Magna after an undisclosed period of absence. The remaining four witnesses listed at least two parishes in which they had resided, and had all moved at least once within the past three years.<sup>22</sup> Two of the witnesses, who had known Dorney since her family moved to the parish, the parish surgeon and the assistant Overseer of the Poor (the oldest witness by far at 59), represented local officialdom.<sup>23</sup> A farmer

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1772), 2:403. The Dorneys may also have left the parish sometime after 1836, when the Poor Accounts run out, because in 1838 the Turnpike Commissioner's House was occupied, according to the Survey, by Ann Ford.

<sup>22</sup>Thomas Williams, aged 25, Chew Magna; Francis King, aged about 22, Stanton Drew; John Atheal Chiswell, aged 59 and upwards, Chew Magna; Edmund Lewis, aged 29 and upwards, Axbridge, had all lived constantly in their parishes. James Corderoy, aged 26, described Chew Magna as 'where he was born and has lived for the last five years'. Thomas Dowling, aged 32 and upwards, 'was born and has resided for ten years last past' at Chew Magna. William Short, aged 26 and upwards, of Wells 'where he has resided about a twelve-month, but late of Axbridge . . . where he lived for about six years and half previous to his coming to Wells...born (as he has heard and believes) at Shepton Mallet'; Arthur Perry, aged about 20, of Chew Magna 'where he has resided between two and three years--born at Churchill'; Hester Coombs, aged 38 and upwards, of Norton Malreward, 'where she has resided since April 1832 born at Tickenham'; Samuel Coombs, aged 46 and upwards, of the same, 'where he has lived ever since April 1832 and previously he lived at Broadfield Down in...Wrington...born at Nailsea'.

<sup>23</sup>The Dowling family had supplied medical officers to the parish over a long period and held the Bishops Sutton coalworks. The Chiswells had been a prominent local family

and his wife had employed Dorney; a farmer's son knew her from passing the turnpike gate (as did many people in the area). One witness was a young cooper, a possible suitor; another a young labourer; and the eighth was a twenty-one-year-old gentleman. Mary Webb's grown stepson, John, was a baker and Chandler and worked for his father, receiving 'wages for his services'. The two witnesses who had known Dorney at Axbridge were young men, one a feltmonger and the other a tinman and brazier. Everyone associated with the cause, except Mary Webb, was able to sign their name.<sup>24</sup>

Yet this is not a typical defamation cause. More than two-thirds of all suits were either proceeded with summarily or were settled or abandoned before a libel was submitted. Witnesses were only cited in the small group of plenary causes that proceeded to proof, and the large number of witnesses called in this cause, most of whom

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in the eighteenth century, though John Atheal Chiswell, who served as Assistant Overseer, gave his occupation as tailor: Wood, Chew Magna, p. 285. According to the Poor Accounts, D/P/che.m. 13/2/5, Mr. Dowling collected a yearly salary of £27 between 1830 and 1835 as parish surgeon, and the unnamed Assistant Overseer earned £40 a year.

<sup>24</sup>Gatekeepers were 'responsible for interpreting the complex regulations and collecting the toll dues. They had to measure wheels, weigh wagons, determine who was eligible for exemptions and impose fines'. Whether or not this required literacy is difficult to say: Albert, Turnpike Road System, p. 83.

testified to Dorney's character rather than to the events themselves, make it an extraordinary source. Circumstances had always been taken into consideration when meting out punishment and determining the costs of a suit, but rarely are any but the most immediate circumstances revealed in depositions. The extensive documentation in this cause sheds an erratic light on such questions as motivation and the field of vision remains frustratingly narrow and discontinuous, yet because Dorney's reputation became the central issue in the cause, some of her sexual and occupational activities are described in unusual detail.

Collinson observed that Chew Magna was no longer a borough, a market town, or even a 'large Clothing town'. His near-contemporary, Martha More, described it around the turn of the century as 'populous, ignorant, and wicked'. The only manufacture remaining to it at that time was 'a few edgetools and stockings'. A red ochre, used for marking sheep and by apothecaries, was produced locally and the fertile soil furnished employment for many of the growing parish's inhabitants.<sup>25</sup> Several of the fathers listed in the baptismal registers of the 1820s and 1830s gave their occupation as collier. Chew Magna was poorly served by the Church of England: in 1837 the parish church could accommodate only 350, though a second Sunday service

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<sup>25</sup>Collinson, Somerset, 2:94; [More], Mendip Annals, p. 230; VCH, 2:354.

was added sometime between 1814 and that year and a second church had been built by 1851.<sup>26</sup> The Rev. John Hall had been vicar of the parish since 1784 and in the 1830s he took advantage of a licence to live in his own house in the village rather than in the ruined vicarage. Hall had employed curates since at least 1825, but he continued as vicar until his death in 1841.<sup>27</sup> It was during his incumbency, in 1819, that Overseers were advised to refuse relief to those who failed to attend Church (unless they had a doctor's certificate) and to those who frequented pubs or kept dogs.<sup>28</sup> Wesley had been warmly received in the parish in the 1780s, and it may have been Parson Hall who originally offered his pulpit to Wesley in 1784, only to close the church to him when he arrived. There was, at that time, a Methodist preaching house in the parish and in 1851 five Nonconformist sects, including the Wesleyan Methodists and the Friends, operated meeting houses, Sunday schools and day schools in Chew Magna.<sup>29</sup> The gentry exhibited less continuity than the clergy and Chew Magna, unlike neighbouring Stowey which had been dominated by a

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<sup>26</sup>Kemm, 'Church of England', pp. 183-84; 186; Bettey, Wessex, p. 95.

<sup>27</sup>Bishops Transcripts, Chew Magna; Wood, Chew Magna, pp. 183; 205; 38.

<sup>28</sup>Wood, Chew Magna, p. 268.

<sup>29</sup>VCH, 2:62-3; Bettey, Wessex, p. 95.

single family from the seventeenth century, was a parish without any obvious or unified gentry presence. Two of the manors had changed hands at least once in the late eighteenth century and one was held by a Quaker iron-mongering family prior to their bankruptcy in 1844.<sup>30</sup>

Thomas Dorney and his family kept the two turnpike gates at Chew Magna and Stanton Drew and in exchange for allowing the Webbs to bring their bread cart across twice for one toll, John Webb carried small parcels back and forth for the Dorneys.<sup>31</sup> These arrangements appear to have broken down a week before the incident that brought the family to court, according to Mary Ann Dorney:

About a week before the [29 October] last of a Monday evening she and her sister Susan...went to the Shop of John Webb of Chew Magna...after some Bread, and her sister Susan went out into the Road to take a Basket which...John Webb had brought for her Father in his Cart, and her...Sister said to a little boy, the son of...John Webb, "you are rather late Benny" upon which John Webb replied..."Benny don't want to say anything to you, here take your Messes" and nearly threw the contents of the Basket into the Road.

She goes on to describe the confrontation between

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<sup>30</sup>Wood, Chew Magna, pp. 38; 179-80; Collinson, Somerset, 2:94; VCH, 2:62-3.

<sup>31</sup>Trustees frequently complained that gatekeepers defrauded them by not turning over all of the tolls; if Thomas Dorney was not a lessee, he had no power to waive tolls in this manner. Sunday churchgoers, carts carrying agricultural implements, manure or goods not bound for market and others were excused from paying the toll: Albert, Turnpike Road System, pp. 82-3. Susan Dorney is quoted as saying that 'they gave John Webb...many a four pence half penny' (presumably the price of the toll) to which Mary Webb replied 'How many four pence halfpenny's has it cost us for that poor fellow'?

her sister and Mary Webb a week later:

And on the 29th day of October last [she] and her...Sister went again to the shop of...John West [Webb] and her...Sister then asked Mary Webb... what made her Husband so abrupt in his manners and added "I don't consider it any favor Mrs. Webb to bring the Basket, for my Father do let you have two Carts for one Toll" and then...Mrs. Webb hooped out and said "Favor! What Favor! all the Favors we have had of you is to be laid out upon that poor fellow" meaning her son, as Deponent believes--upon which...Susan asked "What poor fellow" and...Mrs. Webb said "Go and see" and pointed to the Door of her Kitchen, and Deponent's Sister said "I shall not go and see, for I have no right there" then...Mrs. Webb...said "Go and see you strumpet" and her Sister replied..."I don't know what you mean by calling me in that manner, I shall make you know better" and Mrs. Webb told her Sister to walk out, and she and her Sister went out of the Shop, and as soon as they were out...Mrs. Webb came to the Shop Door and halloed after her...Sister and said "Go along you nasty stinking Whore" and Deponent and her...Sister then ran home...when they left the Shop...many Persons were coming out of their Houses to know what the Noise was about.

An alternative version of the incident was given, almost six months later, by Mary Webb's stepdaughter, Eliza. Eliza Webb, who at 21 must have been close in age to Dorney, lived at home with 'her Father and his wife' and assisted in the shop. Eliza was in the room behind the shop when Dorney entered and asked

why her Son did not haul her from Stanton, and Mary Webb replied and said they had no objection to haul anything for her Father but they did not chuse to haul her, and...Dorney then asked what she had done, and...Webb told...Dorney to go and ask him, meaning her, Respondent's, Brother John, who was in the Kitchen adjoining, and...Dorney said she would not go in, and then...Webb told her to go out of the Shop, and she not going...Webb said she would get a Constable and make her go, upon which she, Respondent, left the Shop.

About ten minutes later Thomas Dorney 'came up to the Shop

and into the Kitchen of the House' and asked Mary Webb 'what his Daughter Susan had done that she should have abused her so'. Mary Webb explained

that the reason they did not chose to haul his Daughter Susan was because her Son in law John had got the bad disorder of her...and then Mary Webb did call...John Webb the Younger who was in a back Room of the House, and he came into the Kitchen...And then...Thomas Dorney told her...Brother that he must be mistaken and that it must be by some other Young Woman that he had the bad disorder, and her...Brother replied...that he had caught it of his Daughter, upon which...Thomas Dorney told her...Brother that he would prosecute him to the utmost of the Law, and told her...Mother in law that he would put her into Wells Court.

We should not take the strict family loyalty expressed in these accounts for granted, for both young women had some reason to depart from it. When the inevitable question of Dorney's character arose, Mary Ann replied that Susan 'hath had a misfortune and had a Child about a year and half ago, but her conduct ever since has been sober and good', a generous statement from a sister who was seen, at least by Eliza Webb, as an unsuitable social companion because of Susan's misfortune. Eliza Webb went so far as to deny that her stepmother had called Dorney 'a whore, a Poxy whore or any other words of the like nature', yet not all children were ready to defend their step-parents.<sup>32</sup> Thomas Dorney, though never called as a

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<sup>32</sup>Eliza Webb, in her answers, said 'she was of no kin to Mary Webb...before her Father married her, and she now lives with and is dependant on her Father and his Wife'. For an example of a stepdaughter who gave a very cool deposition on her stepmother's behalf, see Nowell v. Gowen, Chapter 8, below.



witness, expressed his loyalty in other ways, among them commencing the suit as Susan's father and guardian. This may indicate that Susan was still a minor in 1832 (and had borne her bastard at a relatively young age); it also suggests that Thomas Dorney thought that his own good name was bound up with that of his daughter. If Thomas Dorney's appointment as gatekeeper depended on the good opinion of the turnpike trustees, usually local notables, then he may have been acting to defend his livelihood.<sup>33</sup> He was in any case a loyal father: Susan had never left home in the course of her misadventures and her father continued to own and shelter Susan and her child.

James Corderoy, a labourer who had been waiting outside for his turn in the shop when the Dorney sisters erupted into the street, admonishing Mrs. Webb, "Hush, don't keep a Noise in the Street", heard Mary Webb shout, "You nasty stinking Whore--go home do". Mary Ann Dorney's evidence and this corroboration would have been

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<sup>33</sup>The trustees were men of local importance, including J.P.s, and they often hired on recommendation. Thomas Dorney may have feared that rumours that the toll house had been converted to a brothel, if they went uncombated, could lose him his job: Albert, Turnpike Road System, pp. 57-8; 84. Thomas Dorney was probably not the only gatekeeper in Somerset to employ his daughters in collecting tolls. Samuel Williams, a turnpike gatekeeper at Pilton, and his daughter Hannah gave informations against a man who had come into the turnpike house to shelter from the rain and had then run off with their 'large' edition of the Old and New Testaments that lay in the window. The man was captured with the help of the villagers of Pilton: Q/SR 354 (Taunton, 1786).

sufficient to prove most defamation causes and to allow the judge to pronounce sentence in favour of the plaintiff. But the cause did not end here. Instead, Mary Webb and her proctor responded by attacking Dorney's vulnerable reputation. Witnesses might claim that they had heard nothing negative about Susan Dorney's reputation, but as soon as they admitted to knowing of the child, they could legitimately be accused of missing the point. James Corderoy knew that 'Susan Dorney has a Child and he knows not if she was ever married, that he knows not but she is a Person of sober Life and Conversation and never heard anything said of her to the contrary'.

This sudden inversion of the legal proceedings would not have been possible had not the canonical view of defamation (as a violation of Christian charity, harmful to the souls of defamer and defamed, warranting immediate excommunication) been eclipsed by a more secular approach to slander. Traditionally, successful prosecution required proof that defamatory words had been spoken and that they were maliciously intended. Eliza Webb's brother, John, may have told Thomas Dorney that 'he did not care what he did to him, that he could not hurt him, for he only spoke the truth', but in the church courts truth, in general, was no justification for words spoken with malice.<sup>34</sup> However,

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<sup>34</sup>Eliza Webb denied that her brother said "he did not care a damn" when Thomas Dorney threatened him with a

libels included articles that describe the plaintiff as a 'person of a sober and virtuous life and conversation' and demand that the plaintiff's good name be restored. Restoration of a good fame presupposed its existence and witnesses were routinely asked about the characters borne by litigants. Mary Webb's proctor never denied that his client had called Dorney a whore. What his legal manoeuvres suggest, however, is that Dorney did not have a reputation to damage. If, in the process of proving this contention, he asserted that Dorney had borne a bastard, been promiscuous and infected at least two men with venereal disease--in other words, that she was a whore--it was not necessarily because he was trying to show that Mary Webb had spoken the truth. Intentionally or not, he was demonstrating the essential sexual component of female reputation.

The allegation produced by the defence describes Susan Dorney as a woman of 'ill fame and of a very disorderly life and conversation...[who] has been delivered of a Bastard child'. Dorney's proctor responded with five closely written pages of questions to be administered to

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suit. Burn, Ecclesiastical Law, I:483 and 2nd ed. (1767), 2:127: Truth was not a justification because if you detected your neighbour in violation of the ecclesiastical law--committing fornication, for instance--it was your responsibility to inform your minister or your church-wardens so that the wrongdoer might be presented to the ecclesiastical court for correction for the offence. This was not a purely punitive measure, but was an outgrowth of the Church's concern with correcting sinners.

the witnesses called on Webb's behalf. The strategy was to establish three mitigating circumstances. First, that Dorney had been seduced under a promise of marriage from a man who had been courting her 'in an open and honourable manner' but who lacked the means to support a wife and child. Second, that the Webbs and the Dorneys had long been on good terms and that a dispute over their business arrangements may have provoked Mary Webb's outburst. And finally, that the four young men called as witnesses (two of whom were never examined) belonged to a dissolute set known to spend time with 'low and disorderly women'. Once attention shifted from the defamatory words to Susan Dorney's character, the cause could continue forever, with Webb's proctor challenging Dorney's reputation and his adversary discrediting the witnesses called against her. In the end, only one further allegation was admitted, and it was intended to elicit proof of Dorney's good character.<sup>35</sup> When the value of reputation had become so open to negotiation, the church courts and their rigid standards could not hope to survive.

It is as a result of these allegations and the testimony they elicited that the story of Dorney's past emerges. Thomas Dorney had taken his family to live at

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<sup>35</sup>Three allegations were submitted on Dorney's behalf on 30 July 1833, 5 August 1833 and 19 November 1833. The first was rejected and the second withdrawn.

Axbridge around the 25 March 1830, and stayed for nine months keeping the turnpike gate there:

During such period one Edmund Lewis courted...Susan Dorney in an open and honorable manner and made her proposals of Marriage which...Susan Dorney accepted and that in consequence they associated together upon the terms of affianced Lovers--And that under such professions and promises of Marriage...Edmund Lewis seduced...Susan Dorney and that on the 10 June 1831 she was delivered of a child of which...Edmund Lewis was the Father...during...Susan Dorney's residence at Axbridge [she] did not associate with any person except...Edmund Lewis and that at such time and ever since she has been and been reputed to be a young woman of good fame and virtuous life and conversation...On [29 October 1832] Susan Dorney was a person of virtuous life and pure habits.

Dorney's proctor, who knew that the existence of the child was common knowledge and the factor that worked most powerfully against his client, must have considered this explanation the one most palatable to the judge and the witnesses and included it in the allegation he submitted.<sup>36</sup> Though it falls short of recognising sexual activity between engaged couples as legitimate, it gives equal weight to sexual exclusiveness and good intentions. If Susan Dorney succumbed to the false security of a promise of marriage, it was not a unique fall, nor was she entirely to blame. That Dorney accepted Edmund Lewis and then had sexual relations with him less than six months after she

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<sup>36</sup>Chew Magna bastardy examinations favoured this sort of formulation: 'by frequent persuasions and false Allurements together with repeated promises of Marriage with her at length prevailed on her and had the carnal knowledge of her body': D/P/che.m 13/5/4, examination of Mary Baller, 4 May 1737.

met him is not considered worthy of comment.

William Short, a twenty-six year-old tinman and brazier who had lived at Axbridge for six and a half years before moving to Wells a year previously, remembered the Dorneys. He had lived two doors away from them, and he was sure that Susan Dorney had a good reputation as long as she had remained at Axbridge. He

frequently saw Edmund Lewis talking with Susan Dorney...at her Father's door and walking out with her on Sundays during the day time, and he supposed...Lewis was courting...Dorney in an honorable manner...he never heard...Lewis make Proposals of Marriage to...Dorney and knows not if she accepted any such Proposals.

In fact, he had no direct knowledge of the seduction, the pregnancy or the birth of the child. He had seen Edmund Lewis 'in custody of a Person, whom...Lewis informed him...was the Overseer of Chewmagna and that he was come down for the money for Miss Dorney's Child', and he saw Lewis's brother Henry 'pay some Money to such Person, upon which...Lewis was released'. He had, however, never seen Dorney in the company of any other man, but 'he must confess he did not visit much and was not much out at night, being a married Man'.

Edmund Lewis himself was summoned. Lewis recounted the events leading to the birth of Dorney's child and her swearing him as father as if he were repeating the words in the allegation, though he is vague on dates and 'cannot set forth' even the approximate time of the birth. He ended by

noting that Dorney 'was reputed to be Woman of good Fame' when she came to Axbridge, 'and has been so considered since that time save and except as to what may be thought of her by her having allowed him to take liberties with her and by which she became with Child'.

The first witness to undermine this account of Dorney's past was John Atheal Chiswell, who had held the post of Assistant Overseer of the Poor of Chew Magna for eight years. He recalled that Susan's mother had applied to him in July 1831 for relief 'for the support of her Daughter's child and to have her Daughter taken before the Magistrates to swear to the Father of the Child, that an order might be made out for its support'. Chiswell told Mrs. Dorney how to proceed, and he met Susan and her mother before the six magistrates at Old Down on the appointed day. Dorney swore the child to Lewis and an order was made out requiring him to pay a weekly sum for the support of the child.<sup>37</sup> Lewis, who had been apprehended under a

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<sup>37</sup> Though a number of Bastardy Orders (D/P/che.m. 13/5/1) and Bastardy Bonds (13/5/2) survive for the parish, Susan Dorney's are not among them. Ten orders survive for the period 1829-1834, and the reputed fathers include four labourers, a brazier, a warrener, a local gentleman and three blacksmiths (two of whom were named by the same woman, the daughter of a blacksmith). Three of the fathers were from outside the parish. The initial sums charged to these men ranged from 7s.6d for one of the labourers to £1 3s. 6d. for the warrener; the gentleman and the warrener were to pay an additional 2s. a week; the rest paid 1s.6d. Wood claims that overseers tried to collect £10 bonds from the fathers of bastards: Chew Magna, p. 266. According to the Poor Accounts (D/P/che.m. 13/2/5) the Overseer was collecting money from twelve reputed fathers in 1830-1, a

warrant and taken into custody, was present at the hearing. Chiswell denied that the magistrates had asked Lewis whether he had ever promised to marry Dorney

[He] has no recollection of having heard the Magistrates...ask...Lewis why he did not marry...Dorney, but such a question is often asked by the Magistrates of a Person under similar circumstances to...Lewis; now did he hear...Lewis say that he would have married her but that he was not able to keep a Wife, and if such an answer had been given in his...hearing he thinks he should now recollect it...from what passed on the occasion at Old Down he believes it to be true that...Lewis was and is the Father of the Child, but has no reason to believe therefrom or from anything he observed or heard said by...Lewis then or at any other time, that...Lewis seduced her...under a promise of Marriage.

In answer to further questions about the relationship between Lewis and Dorney, Chiswell was equally cynical:

he knows not if...Lewis is now acquainted and on good terms with...Dorney--but he should think otherwise, for he has never once seen...Lewis in Chewmagna or heard of his having been there to see...Dorney...since...Dorney was delivered of a bastard Child...he never heard that ...Lewis was heretofore in the habit of paying his addresses to...Dorney in an open and honorable manner, or that any Courtship between them took place, nor did he ever hear any Person, except...Dorney and her Mother, say that...Lewis seduced...Dorney under a promise of Marriage.

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number that dropped as low as five at the end of 1835 but was back up to eleven in early 1836. Susan Dorney began to receive relief as one of the many casual poor shortly after the birth of her child in 1831, and continued to receive 3s. each week until November 1835 when she was reduced to 2s. a week, a sum she received at least until the end of February 1836 when the account ends. In all, the parish paid out £36 10s. Od. for the maintenance of Dorney's child at a time when the parish spent over £680 each year on relief: Wood Chew Magna, p. 271. Edmund Lewis contributed £1 19s. Od. in 1831-2, £3 18s. Od. the following year; by February 1836 he had paid over £39 9s. Od.



Chiswell, a lifetime resident of the parish, gave the appropriate good characters for the young men called as witnesses. He had known John Webb the younger and Henry and James Gover (neither of whom ultimately testified) 'from their childhood' and Arthur Perry 'for about two years'. Chiswell denied that they were

Young Men of dissolute habits and much in the habit of associating with low and disorderly Women and to be several times diseased from such their immoral conduct but on the contrary believes them to be sober and steady Young Men...but he has heard and believes that ...Arthur Perry and John Webb the Younger have both of them been diseased from connexion with...Dorney.

Webb and Perry were interrogated at length about their relations with Dorney. Their accounts freely mix rumour, hearsay and their personal estimations of Dorney's character with descriptions of their sexual encounters. Webb was 'well acquainted' with Dorney, who he had met about two years before

paying her the Toll on passing thro' the Turnpike Gate...he hath heard and knows...Dorney is not a Young Woman of a virtuous life, for he has heard she has suffered Young Men to take liberties with her Person and to have the carnal use and knowledge of her Body, and she once permitted him to have the carnal use and knowledge of her Body, which was on a Monday night, the first Monday in the Month of September last, at Chewmagna, between the hours of eight and nine, when he was alone with her, they having left the House in which they had been for sometime sitting in Company with the Mother of...Susan Dorney...he is not in the habit of keeping the Company of loose and immoral Women, and hath not done so since he had the carnal knowledge of...Dorney...he never had the venereal disease or any other foul disease from being connected with a Woman before he had connection with...Dorney, when he had the disease commonly called "the clap" and which his Medical Attendant called a Gonorrhoea, and he has never had any disease of the kind since...it was on or about

the seventh day after his connection with...Dorney that he found himself unwell and on the second day after, being informed of the nature of his complaint, he went to Doctor Collins of Chewmagna, a Surgeon and Apothecary, to cure him, and who attended him for better than Six Weeks, but finding he did not get better he consulted Dr. Dowling of Chewmagna, another Surgeon and Apothecary, under whose Care he...was until the January following, when he went to Mr. Bryant of Bristol Apothecary and about a fortnight afterwards he was cured...shortly previous to the time the words were spoken by Mary Webb as herein set forth Mr. Collins did attend him for the Cure of the Disease...and on his first speaking to Mr. Collins about it, he did, without being asked the question, inform Mr. Collins that he had caught the Disease of Susan Dorney and he replied and said "she must have had it very bad" and about a fortnight afterwards...Mr. Collins asked him if he was sure he took it of...Dorney, and he told Mr. Collins he was quite sure he took it of her - and he denies that ...Mr. Collins did immediately thereupon, or at any other time, tell him...that it was not true, but on the contrary said "She looked as if she has it".

Arthur Perry, two years younger than John Webb and a gentleman, was even less generous. He immediately denounced Dorney as a 'common whore'. Though he had only moved to Chew Magna two or three years previously, he had been born less than ten miles away and had presumably spent his short life in the neighbourhood. Whether it was his familiarity, his personality or his status that aided him, he was privy to a great deal of local gossip and was well informed about Dorney's affairs. From the Overseer of the Poor he had learned that Dorney was receiving money for her bastard, and the tithingman told him 'he had great trouble in getting Money from Lewis for the support of the Child'. Shortly after Dorney's confinement he had heard her father say 'that he thought it was for the best as it happened,

rather than she should have had the Fellow, meaning Lewis'. He had known Susan Dorney for two years and had met her, like everyone else, while paying the toll. Perry was less circumspect in his description of their relations, possibly because sexual licence was even more the prerogative of class than of gender:

[F]rom his own personal experience he knows her to be a Whore, and has heard her spoken of as being a Whore; that he has been frequently allowed to take liberties with her Person and has several times had the carnal use and knowledge of her Body - the first time about a twelvemonth since in the Toll House at Stanton Drew, and between the hours of Four and Five in the afternoon...he cannot swear positively to the day week and month of the Year, but he believes it to have been in the latter end of July or the beginning of August last...he and...Dorney were alone at each time they were connected, but previous to the last time he had the carnal use and knowledge of her Body she left her Sister and some Man who was talking with them and followed him a considerable distance...previous to his having had the carnal...knowledge of the Body of...Dorney he never had any Disease which is generally reputed to arise from Sexual connexion, and after his having been connected with [her] he had not any the like connexion with any other Woman before he discovered that he was diseased; the nature...of which disease was, as is commonly called "the clap"...it was on the sixth day after the last time he had criminal connexion with...Dorney that he discovered he was diseased, and he first applied to his Brother, House Pupil to the Infirmary in Bristol, who gave him Medicine for the Complaint, and instructions for the use of it and treatment of himself, and having used such Medicine he applied to Mr. Thomas Dowling of Chewmagna Surgeon and Apothecary, for a fresh supply shewing him the letter and instructions of his... Brother, and from...Mr. Dowling he received Medicine until he was cured, and he was suffering from the Disease for more than two Months.

Among the witnesses called to testify to Susan Dorney's good, if flawed, reputation were two young men close in age to Webb and Perry. The first, Thomas

Williams, was a cooper and lifetime resident of the parish. He had known the Dorney family since they moved to the parish

and during the whole time he has been acquainted with her, he has always found her to be a very prudent Young Woman, and of virtuous life and conversation; that he has visited...Susan Dorney as much or more than any other person since she has been at Chewmagna...and likes her very much, for she has been always civil to him, and her habits have been good and pure.

At 25, with a trade, Williams may have been a suitor.

Francis King, three years younger, still lived with his father, a farmer. King provides a picture of life at the toll house in strong contrast to that offered by Perry:

He has been in the Company of Susan Dorney...both in the day time and Night - as late as Eight or Nine o'Clock at night, but not later than Nine - he became acquainted with her about two years ago...and kept up his acquaintance with her till about two or three Months since - it ceased upon Susan Dorney's leaving Stanton Drew Turnpike Gate...he never heard...Dorney, upon any occasion when he was in Company with her, use a bad expression, nor did she ever allow him to take the least liberty with her, nor did he ever offer to go beyond a Joke with her, as he would with a prudent and virtuous Young Woman, and he believes that during the whole time he has known her she has been, and is now, a person of good and virtuous life and conversation, for he never saw anything improper in her, and he had the opportunity of seeing her continually, for he passed through the Turnpike Gate at Stanton Drew almost every day, except Sundays, for a twelve month previous to September last.

It is just as well to recall that the object of this exercise is to discover what we can about the significance of reputation in an early nineteenth-century community and to avoid the temptation to establish the 'truth' so that we may sit in judgement upon Susan Dorney

and her adversaries. These voices from the past come to us mediated by a legal system that shaped answers by asking certain questions and by limiting the admissible. Witnesses chose the words that they thought their examiners wanted to hear and everyone wanted their party to win.<sup>38</sup> We can, however, make use of the information about sexuality strewn in our path by viewing the inconsistencies between depositions as suggestive of differences in attitudes and perceptions. One area illuminated in this way is the operation of the double standard.

The young men who gave Dorney bad characters could do so while confessing that they had shared her company, sometimes even her intimate company, without compromising themselves or their own reputations. Chiswell could describe them as free from associations with low women while admitting that they had slept with Dorney. Such paradoxes went unchallenged. The younger John Webb's sister, however, the only woman called to testify against Dorney, devoted much of her examination to delineating the boundaries that divided her from a woman of Dorney's character:

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<sup>38</sup>The hidden connections between witnesses and parties may be suggested by the following: a Thomas Dowling owned a house and garden occupied by a John Webb; a James Webb rented a house from John Atheal Chiswell. Susan Dorney's proxy was witnessed by S.E. and John Coombs; Webb's was witnessed by Charles Mullins (a Richard Mullins, Gentleman, had been named in bastardy orders in 1821 and 1831): D/P/che.m. 13/1/63 (survey); D/D/C (1832); D/P/che.m. 13/5/1 (bastardy orders).

Susan Dorney...was in the habit of coming to the Shop of her (Deponents) Father when her situation was observed by her...and about two years ago...Dorney was put to bed, and from that circumstance, as she...believes, no creditable Persons in Chewmagna have had any acquaintance with her and she is looked upon and considered a bad Woman.

Eliza Webb claimed to know nothing further of the child than that 'a Young Man down in the Country was the Father'. Though 'Thomas Dorney and all his Family were on Friendly Terms', these terms were limited to mutual favours and were restricted socially. Susan Dorney had balked at entering the kitchen behind Webb's shop; Eliza Webb explained that 'their Families were never on visiting Terms, nor did she...and Susan Dorney or her Sister ever keep Company together'.

What may have unsuited Dorney for the company of respectable young women threatened to deprive her of a livelihood. Hester Coombs, the wife of a farmer, observed Susan at the toll after she and her husband came to live in a neighbouring parish in April 1832. Dorney frequently came to her for butter and cream

and on one of her Visits she asked to be employed as a Workwoman, and she...did let...Dorney have some sewing to do for her, and she thus became more acquainted with...Dorney, and previous to her, Deponent's, Confinement in December 1832 she intended to have...Dorney as a Nurse, and spoke to her about it; but afterwards she heard so notorious a Character of...Dorney that she did not think it was proper to have such a Person in her House particularly as she had a Young Family, and she hired another person to attend her as Nurse, but that Person being obliged to leave her about a Week after her Confinement, and...Dorney happening to come to see her, she told...Dorney the report about her and added that she...could not believe

it to be true, and then asked her if she was clean and fit to attend and sleep with her...and being assured by...Dorney she was so, she...took...Dorney into her Service and she remained with her about three weeks and since she left her...she has frequently been to her House on a Visit and to work a little, and...during the time...Dorney lived with her she conducted herself in a very proper manner and as a Person of good and virtuous life and conversation and she has not known of her having conducted herself otherwise since.

Samuel Coombs had nothing to add to this, making it clear that the choice of nurses and hiring arrangements lay with his wife. The Coombses had come to Norton Malreward from Wrington, a parish about six miles from Chew Magna, and may not have been fully cognisant of Susan Dorney's history. The report that Mrs. Coombs heard was one connected with the suit and what she feared was not so much moral contamination (though she was concerned about her children) as venereal disease. Mrs. Coombs was satisfied with Dorney's denials and was willing to employ her. Presumably news of Julia Lewis<sup>39</sup> had reached her by this time and did not disqualify Dorney as a nurse or as a companion to a married woman.

Whereas Eliza Webb had suggested that an ill fame

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<sup>39</sup>Susan Dorney waited more than a year to baptise her daughter, and perhaps in a fit of retrospective legitimization (for the suit had already been in progress for almost half a year) she had her child registered as 'Julia Lewis, dau. of Susan Dorney, aged one year, singlewoman (no father) performed by John Rawes, Curate'. This was on 3 March 1833. Many other bastards were similarly registered, several of them older than Julia Lewis: Bishops Transcripts, Chew Magna. Religious practises such as churching and baptism may have received little encouragement among the poor of the parish: See, Chapter 2, above.

was contagious, Mrs. Coombs took the more practical view that it was disease that passed from person to person. The final witness, Thomas Dowling, went beyond denying the contagious properties of bad reputation and not only refused to appear voluntarily, but when he was summoned refused to commit himself on the subject of reputation, noting that he had no way of judging Dorney's character from 'his own knowledge and observation'.<sup>40</sup> Dowling was the parish doctor, a member of a notable local family, and the man who had treated Webb and Perry for venereal disease. He did reveal that on 30 October 1832 'Susan Dorney and her Mother attended him, and after an examination of [her] Person, at the request of her...Mother, he did not discover any appearance of venereal Disease about...Susan Dorney'. His, perhaps the first medical evidence to be heard at Wells Court, was succinct and, by modern standards, unreliable.<sup>41</sup>

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<sup>40</sup>Dowling had been named as the father of a bastard in 1828, but had refused to appear before the magistrates. (D/P/che.m. 13/5/1). The mother, Mary Spear, may have borne his child or she may have simply hoped to win a more substantial sum for the maintenance of her infant (in this case, 2s. 6d. each week on top of an initial payment of 11s. 6d.).

<sup>41</sup>Gonorrhea is asymptomatic in 80% of women. Syphilis may also be asymptomatic in women, or difficult to detect (as when a chancre develops inside the body or is hidden in the folds of the labia). Chancres may appear from nine to ninety days after bacteria enter the body and usually disappear in one to five weeks, with or without treatment. Therefore, it is unlikely that Dowling would have found primary symptoms of either disease. The



Thomas Dorney, whose desire to defend his daughter was demonstrated within ten minutes of Mary Webb defaming her, was destined to enter a very lengthy period of litigation. The first sentence offered by Dorney's proctor was rejected as being 'in some essential part at variance with the Evidence given in the cause'. Five months later, in July 1835, a sentence was promulgated which stated that Mary Webb had called Susan Dorney a whore 'contrary to good manners', but that the articles of the libel concerning Dorney's good reputation had not been proven. Consequently, when Dorney's proctor abandoned his intention to appeal the following October his client was left with a large bill to pay. On 10 November 1835, Mary Webb appeared at Wells, performed penance in court, and was admonished to pay £25 toward costs.

One wonders if, even had the court completely vindicated her and awarded full costs, Susan Dorney's reputation would not have suffered from this suit. She and her family do not seem to have tried to hide her pregnancy or her child, and many knew that the child was illegitimate. Susan had gotten on well enough for a year and a half after the birth of her child, working at the

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secondary stage of syphilis is more apparent, but its symptoms are easily mistaken for those of other diseases. Without a blood test, accurate diagnosis is difficult: The Boston Women's Health Book Collective, Our Bodies, Ourselves, 2nd ed. (New York: Simon and Schuster, 1976), pp. 174; 176-7.

turnpike gate or elsewhere, and none of the reports of her behaviour picture her as a pariah. This peace was shattered as soon as Mary Webb made her public accusation, and perhaps Thomas Dorney understood that the charge, in conjunction with his daughter's past, was too damaging to ignore. John Webb the younger had kept his condition quiet since the middle of September, if we are to believe his testimony, and though his family began to get restive about a month later, the Dorney family remained entirely ignorant of the epidemic of disease spreading around them.<sup>42</sup> Despite the networks of male gossip that kept Arthur Perry informed of Susan Dorney's business, word of the consequences of their illicit sexual activity may not have gone much beyond the men involved, their families and their medical attendants. The suit could not help but publicise Mary Webb's accusations, as more and more people were drawn in as witnesses. Samuel Coombs noted that 'an unfavourable report about [Susan Dorney] reached his Wife's ears' sometime before Christmas, and hers were undoubtedly not the only ears to have been thus alarmed. And whatever Thomas Dowling thought, gossip still played an important role in maintaining a good reputation in a community such

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<sup>42</sup>John Webb suggested that his family was willing to remain on good terms with Thomas Dorney until he made it known he would sue. When Thomas Dorney appeared at the Webb house on 29 October, Mary Webb 'begged him to go into the kitchen and ask John' what the problem was, and she even offered him a chair before she broke the news.

as Chew Magna. Mary Webb's words had brought people to their doors; perhaps this publicity loosened tongues and made common knowledge what had previously been confined to a few families. One cannot imagine Susan Dorney emerging entirely unscathed from this sudden and lengthy publicity.

The Dorneys and the Webbs and most of the witnesses that they called were typical of those who continued to use the church courts in the eighteenth and nineteenth centuries. The plaintiff, Susan Dorney, was a woman; Dorney and Mary Webb came from the same parish; and their occupations or the occupations of their men placed them within the ranks (Webb more firmly than Dorney) of the rural middling sort. Many of the witnesses they called were of the same rank, some were relatives and others had financial dealings with the parties and their families. But the ways in which the cause was atypical are significant. Susan Dorney was a spinster, not a married woman, and therefore the complementary issues of female adultery and male cuckoldry are replaced by a concern with the sexuality of the young and the unmarried. Her antagonist was a woman, and thus the more common confrontation between a man and a woman, with its ramifications as to sexual power and sexual politics, is avoided. The cause was not, like the vast majority of causes, settled rapidly and at minimal cost. And, as the suit progressed, it became increasingly concerned with the

plaintiff's character rather than with the defendant's crime. This reversal accounted for the participation of witnesses of a higher social rank, those who gave specialist evidence, such as the surgeon, or who testified to Dorney's good character, such as her employers, the Coombses. More importantly, this rearrangement of priorities brings the issue of sexuality and the redefinition of sexual reputation into unusually sharp focus.

This redefinition of reputation and the ultimate exclusion of the church courts from its regulation was not limited to the inhabitants of northeast Somerset who testified for or against Susan Dorney. Other defamation causes of the nineteenth century, and especially the 1830s and 1840s, conform to this pattern, with participants subscribing to narrow and often negative definitions of reputation. Alfred Moxley, called upon to provide a good character for Sarah Viner, the wife of a publican, in 1835, noted, 'he has had many opportunities of observing her conduct, and he never saw her commit any immoral act'.<sup>43</sup> The Church courts were also being used in an increasingly adversarial--rather than conciliatory--manner with the emphasis on longer, more costly suits and the imposition of all sanctions, including imprisonment, on the contumacious. Defamation litigation was becoming more specialised,

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<sup>43</sup>Viner v. Clack, D/D/Ca 454 (1836) and D/D/C (1836).

something which required the intervention of a solicitor between the client and the proctor.<sup>44</sup>

As popular opinion became increasingly ambivalent both to the courts and to the moral standards they were meant to uphold, the widely distributed knowledge of the courts that marked the eighteenth century was less in evidence. In 1843, Josiah Sampson, a seventeen-year-old yeoman, was unable to answer the standard question about the validity of the jurisdiction of the ecclesiastical court because he did not 'know any thing about Courts'. Indeed, Mary Hill, the defendant in the cause in which Sampson deposed, was surprised to find herself in the church court at all. Neither Hill nor Frederick Board, whom Hill eventually countersued for defaming her, seemed to realise that their failure to comply with the court's decrees would be noticed, and when they were both imprisoned for contumacy they remained incarcerated for eight months.<sup>45</sup>

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<sup>44</sup>As early as 1811, James Masters spent over £6 on the legal expences incurred by the solicitor handling his wife's defamation cause over a period of nine months. The solicitor, leaving nothing to chance in his preparation of the cause, 'examined' the three witnesses prior to their expensive journey to Wells, which no doubt accounts for the uniformity of their responses: Masters v. Moss, D/D/Ca 479 (1811) and D/D/C (1811). The cost of the Rev. Mr. Wait's voluminous correspondence with Jane Board's proctor (who was also a solicitor) in the cause described in the following footnote was, like Master's solicitor's expences, excised by the judge from the bill of costs.

<sup>45</sup>Board v. Hill and Hill v. Board D/D/Ca 443 (1843), and D/D/C (1843). Mary Hill's encounter with Frederick Board at the Carpenter's Arms in Dundry, during which she told Board that he owed his employment and

Among those who retained a knowledge of the church courts, the readiness to manipulate language to provoke litigation, and the knowledge that litigation, particularly protracted suits during which costs multiplied, was a satisfying form of revenge, suggest a sophisticated understanding of the legal consequences of words and a willingness to define reputation according to circumstances.

Dorney v. Webb projects us into a period when

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residence at the parsonage of Chew Stoke to the fact that his wife was a whore to the parson, Mr. Wait, ended with Frederick Board calling her a whore and knocking her to the ground. Frederick Board was evidently satisfied with his violent defence of his wife's (and his own) reputation and Mary Hill was content when the Temple Cloud magistrates fined him 5s. and expences for assault. Unfortunately, Mary Hill's accusation was repeated at the examination and reached the ears of Mr. Wait, who insisted that Jane Board bring a defamation cause against Mary Hill under his direction. In acknowledging the injury done to Jane Board, Moses Caple, another witness, recognised the slur on the parson's reputation: Mary Hill had made out 'that Mr. Wait keeps nobody about his house but a lot of Whores'.

Litigation of the sort instituted by Mr. Wait and his proctor was utterly beyond the means of a journeyman plumber and glazier (Board; his wife was a servant to Mr. Wait and had been so before her marriage) and a pedlar of gingerbread and nuts (Hill; she was married to a labourer). Frederick Board and Mary Hill were 'totally unable to bear' the costs of the legal forms that would have secured their release.

We owe the unusually rich detail in this cause to the petition of both defendants for discharge from custody. It tells the story, from Frederick Board's point of view, from the altercation in the pub to the appearance before the magistrates and Mr. Wait's interposition in the affair, including much detail on the process and progress of litigation. Board's incarceration left not only his wife, but their infant and two young children from his previous marriage in 'a state of great destitution'. Having been passed over by the latest parliamentary amnesty, Hill and Board asked only to be 'enabled to contribute to the wants, and comforts, of their respective Families'.

attitudes towards sexuality and sexual reputation were in transition and the boundaries between the reputable and the disreputable were open to debate. The monolithic morality which the church courts were meant to uphold was giving way: officials at Wells who, less than a century previously, would have considered punishing Arthur Perry and John Webb the younger for confessing to fornication in their testimony, allowed their sins to stand; and though Edmund Lewis was taken into custody and forced to pay for the support of his child, neither he nor Dorney were required to stand before their congregations, dressed in white sheets, to perform penance. In its place emerged a more relativistic and circumstantial morality, one which recognised the double standard and which incorporated a definition of reputation that recognised that the all-encompassing good fame that the church courts existed to defend and restore was being replaced by a series of characters determined by the differing exigencies of work, leisure and community. This process had begun long before 1832 and was far enough advanced by this time to threaten the survival of the church courts. The courts themselves, by abandoning the regulation of sexuality through pre-sentment and penance and by introducing changes in court style and custom, had contributed to this shift.

Thomas Dorney knew that he could put Mary Webb into Wells Court for defaming his daughter, but neither he nor

his adversaries subscribed wholeheartedly to the uncomplicated view of reputation and the consequences of insult that had formerly actuated decisions in defamation causes.<sup>46</sup> We have seen Susan Dorney's proctor build a case around a very circumstantial definition of reputation and Mary Webb's proctor refuting it by simultaneously falling back upon the traditional view of reputation--Susan Dorney had borne a bastard and therefore was a bad woman--and parading witnesses who openly and unremorsefully admitted to having had illicit sexual relations. Then, we have the introduction of medical evidence, and the medical practitioner's rejection of the concept of common fame. For Mr. Dowling, characters, like disease, could be seen and experienced and therefore verified. Mrs. Coombs still employed her ears, and declined to hire Dorney when she heard certain rumours, but she relied on her own judgement in acquitting Susan and took her into her bed after hearing Dorney's denials. Though willing enough to participate in

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<sup>46</sup>He also knew that he could prosecute her stepson at common law for accusing his daughter of having a contagious disorder. Neither Mary Webb nor her stepchildren expressed surprise at his words, despite the fact that the last cause from the parish to have gone to Wells Court was probably commenced in 1805--Dowling v. Hand, D/D/Ca 439 (1805)--though there may have been causes during the gap in the records. There had been only six causes there since 1733. Mary Webb may have adhered to a popular superstition concerning defamation which was that no action could be brought unless one specified a partner to a woman's whoredom. Eliza Webb denied that her stepmother told Thomas Dorney "that she did not say whose whore she was" and both Eliza Webb and Mary Ann Dorney describe Susan Dorney's efforts to get Mary Webb to name her stepson.



the litigation, she did not wait for the court to hand down its decision before clearing Susan's character. And even the Dorney family did not surrender themselves entirely to ecclesiastical justice, but did their best to supplement it. Susan Dorney was led off, the day after Mary Webb insulted her, to no less a person than Mr. Dowling for the certificate of virtue that she hoped to have upheld in court.

The witnesses make it clear that reputation had a different value and definition for the spinster, the married woman and the man. For each, the maintenance of a good reputation prescribed certain social relations. The unmarried young of both sexes could meet, if it was in an 'open and honourable' manner, they could talk and go as far as a joke; perhaps, if they had promised marriage, they could have intercourse. Whatever kept Eliza Webb from visiting a 'bad Woman' and her sister did not stop her brother from sitting 'in Company' with the same woman and her mother. Nor did the sense of propriety that led Eliza Webb to deny that her stepmother used bad (not simply actionable) language; to disown any but a general knowledge of Susan Dorney's affairs; and to refer to venereal disease as 'the bad disorder' similarly constrain her brother.<sup>47</sup> He voluntarily admitted to his illicit

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<sup>47</sup>The courts required no more than that the word 'whore' be uttered, and the libel in this cause employs the standard formula: 'thou art you are or she is a whore',

sexual activities; to a stepmother who called Dorney a 'nasty strinking Hussey' and yelled 'go along you rotten arse Whore' loud enough to be heard at a distance of twenty yards, and to the acquisition of 'the clap'. Married women suffered less than the unmarried from association with their own sex: Hester Coombs could have Dorney in her home as a servant and a friend. It was their relations with men, however informal, that brought wives under suspicion.

It is in these standards applied by witnesses that we may detect the inroads of moral concepts alien to a somewhat more egalitarian plebeian sexual culture, a culture which, until at least the early eighteenth century, accorded equal weight to the sexual insults received by men and by women. Of these moral concepts, the double standard is emblematic. Although the double standard has traditionally been associated with adultery, and especially the adultery of the upper classes, this cause suggests that by the nineteenth century, it had a far wider sphere of operation, both in terms of behaviour and of social class. Eliza Webb makes it clear that female reputation was not maintained merely by avoiding illicit sexual relations before

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yet four witnesses reported hearing (or not hearing) a variety of defamatory phrases far more elaborate than this. The words 'connection', 'carnal knowledge', 'taking liberties' and 'foul disease' are taken from the allegation and would not necessarily have been the words chosen by any of the deponents.

and after marriage. The acceptance of the double standard meant that many paradoxes went unchallenged: John Atheal Chiswell could describe Arthur Perry and John Webb the younger as free from associations with low women while admitting that they had slept with Dorney. The very different lines of conduct pursued by Eliza Webb and her brother are evidence of the integration of the double standard into the lives of rural tradesmen and their families. Under the new moral order, Susan Dorney could be condemned for promiscuity while her male partners were absolved; under the old, both she and Edmund Lewis would have lost their good names until they had rectified their lapse by marriage and penance.<sup>48</sup>

This raises a final question: did Susan Dorney have a good fame to defend at Wells, or was her very presence there the result of the secularisation of defamation litigation and the adoption of a moral and legal code antagonistic to the original purposes of the church courts? This does not admit of an easy answer. We do know that Susan Dorney recovered sufficiently from her earlier

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<sup>48</sup>Stone, Family, Sex and Marriage, p. 630, quotes a commentator on Wales in 1804 who notes that poor pregnant couples marry to "secure their reputation and with it a mode of obtaining a livelihood" (from W. Bingley, North Wales (London, 1804), pp. 282-3), but this sort of egalitarianism was probably rare in England by this time. The shift toward legal recognition of the double standard, as far as bastardy was concerned, was already underway and Susan Dorney was fortunate to have borne her child before the enactment of the New Poor Law.

misfortune to be treated with respect by some of the inhabitants of Chew Magna, and this acceptance must have entitled her to think of herself as having a good reputation. Yet she and her father discovered, after three years of litigation, that the remedy they sought at Wells remained elusive. Where a straightforward defamation cause--the hurling of an insult at the publican's wife in the presence of two witnesses--might still be resolved quickly at Wells, a cause as complex as Dorney's exposed conflicts in values and attitudes that were making the church courts increasingly anachronistic.

There are, of course, certain similarities between the Tutton and Dorney causes, despite the fifty years that separate them, and these similarities may be traced to the unmarried condition of the plaintiffs. Both Tutton and Dorney were strongly defended, immediately and later in court, by their families. This support included siblings as well as parents, female kin as well as male. Fame was truly common for women in the sense that insults to their reputations rebounded on husbands, if they were married, and on their families if they were not. These two causes also suggest that a concern with respectability was filtering down through the plebeian ranks in this period. Betty Tutton, a tradesman's daughter (some of whose relations, at the very least, were present when the bill was read out and

demonstrated their willingness to quarrel on her behalf) was suddenly anxious to divorce herself from the judgement of the mob when her sexual life became a public topic. And fifty years later Susan Dorney, a woman of lower rank and one who had borne a bastard--a possibly irretrievable mistake in Tutton's time--went to great lengths to publicly defend her good reputation. But most significantly, the attempts of Betty Tutton and Susan Dorney to restore their good names at Wells Court exposed ambiguities in the sexual code to which they were subject. These uncertainties centered on the role of sexual activity in courtship and on the consequences of premarital sex that did not lead to marriage.

Of central importance to the autonomy of plebeian sexual culture was the definition of marriage, and it was the attack on marriage that led to the uncertainty surrounding the sexuality of the young and unmarried in the years following Lord Hardwicke's Act. If, in the peasant communities of seventeenth-century Somerset, pregnancy made the marriage, and a promise of marriage enabled couples to enjoy a regular sexual relationship that was recognised as both marital (should pregnancy, and consequently solemnisation, result) and reversible (should no pregnancy occur within a reasonable time), the Marriage Act attempted to remove that flexibility by equating marriage with solemnisation and sharpening the distinction between the married

and the unmarried, and between licit and illicit sex.<sup>49</sup> As Tutton and especially Dorney found, without a clear and universal sense of where the boundaries lay, the reputations of singlewomen became increasingly difficult to define and defend.

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<sup>49</sup>Quaife, Wanton Wenches, pp. 45; 59; 61 and Weeks, Sex, Politics and Society, p. 24.

## CHAPTER 8

## DEFAMATION IN A NINETEENTH-CENTURY CITY:

## BATH, 1800-1850

I. Introduction

Bath, in the eighteenth century, was one of the most fashionable resorts in England and by the end of that century was among the dozen largest cities in the country.<sup>1</sup> The success of the spa trade sustained over a century of population growth and a series of building booms that provided the housing and places of entertainment for the seasonal visitors and for the working population that serviced them. John Wood, the city's most illustrious architect, estimated in the 1760s that Bath could hold 12,000 visitors.<sup>2</sup> In the late eighteenth century the season was expanded from a few consecutive months in early summer to two periods extending from March to June and from September to December, dates which governed the movement of

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<sup>1</sup>Neale, Bath, p. 47. I am indebted to this and two other works by Neale: 'Economic Conditions and Working Class Movements in the City of Bath 1800-1850' (M.A. dissertation, University of Bristol, 1963) and 'The Industries of the City of Bath in the First Half of the Nineteenth Century', Proceedings of the Somerset Archaeological and Natural History Society 108 (1963-4): 132-144.

<sup>2</sup>Barbeau, Life and Letters at Bath, p. 79n.



THE CITY OF BATH c. 1817  
 (from the Bath Guide of 1817)



rich tourists as well as beggars into the city.<sup>3</sup> Bath simultaneously acted as a magnet to the surrounding countryside, drawing in the men who built the city and the women who became its domestic servants. Bath was also a city with a sexual reputation, a city where the upper classes met for dalliance, courtship and marriage; where they sought cures for infertility and for the pox and above all, where they exchanged gossip.<sup>4</sup> The open sexuality of the baths and the opportunities for illicit sexual liaisons were as frequently noted in novels as were the matchmaking

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<sup>3</sup>Corfield, Towns, p. 59. See Warner, Excursions from Bath, p. 7, for a parody of the beggar 'season'.

<sup>4</sup>Beau Nash had tried to put a lid on gossip in the early eighteenth century when he was Master of Ceremonies (see his rules of conduct), declaring that 'Several Men of no character, old women, and young ones of questionable reputation are great authors of lies in this place, being of the sect of levellers': The Original Bath Guide, considerably enlarged and improved; forming an indispensable pocket companion for the visitor and inhabitant (Bath: Meyler and Son, 1817), p. 70. Dickens found the same 'queer old ladies and decrepit old gentlemen, discussing all the small talk and scandal of the day, with a relish and gusto which sufficiently bespoke the intensity of the pleasure they derived from the occupation': The Posthumous Papers of the Pickwick Club (Harmondsworth: Penguin Books, 1972), pp. 588-89. Smollett, speaking perhaps from experience, condemned the doctors who, through their professional contacts were 'informed of all the private occurrences in each family, and therefore enabled to gratify the rancour of their malice, amuse the spleen of peevish indisposition, and entertain the eagerness of impertinent curiosity': Peregrine Pickle, 2:304. In Roderick Random, chaps. LVIII, LIX and LX, Smollett provides an example of the way the upper class rumour mill operated to exclude the unwanted from Society.

and the market in eligible spinsters.<sup>5</sup> The notorious Avon Street, subject to the river's frequent floods, was as synonymous with iniquity as the Royal Crescent was with beauty and tranquility: it housed the very poor, the criminal and a large number of the city's prostitutes.

The fifty years following 1800 constituted a period of great change in the city of Bath. The crash of 1793 heralded, according to R.S. Neale, the 'onset of a secular stagnation in its attraction as a place of resort'.<sup>6</sup> Bath, whose massive growth had been fuelled by the thriving tourist trade, was eclipsed by newer, more intimate resorts and, when the Napoleonic wars ended, by the revival of European spas. Lydia Melford, whose family's travels are chronicled in Smollett's novel, Humphry Clinker, noted in the mid-eighteenth century that at the pump rooms 'you see the highest quality and the lowest trade folks, jostling each other, without ceremony, hail fellow well-met'.<sup>7</sup>

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<sup>5</sup>The Corporation put an end to nude bathing in 1737 but was unsuccessful in its attempt to halt mixed bathing in 1753: Haddon, Bath, p. 102. 'Nowhere in England were manners so dissolute, or liaisons so easily formed, nowhere was vice so public and unblushing', yet Barbeau goes on to say that this reputation dated from the early eighteenth century and had little foundation in later periods: Life and Letters at Bath, pp. 105; 109; 110. Nonetheless, the myth was a potent one and, true or not, dictated the literary perception of the city well into the nineteenth century.

<sup>6</sup>Neale, Bath, pp. 262-63.

<sup>7</sup>Smollett, Humphry Clinker, pp. 68; 78; 80-1.

This in exclusivity, which amused her brother and plagued her uncle, played its part in the abandonment of Bath.<sup>8</sup> The population growth of the preceding century came to a halt in the 1820s, despite the continued expansion of suburban working class districts and the more recent development of the gentrified parish of Bathwick.<sup>9</sup> As the visiting company declined, Bath became the permanent residence of affluent widows and retirees. Its economic profile became that, increasingly, of a retirement community large enough to support the trade and commerce of a good-sized city. Socially, Bath became a haven for those

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<sup>8</sup>Haddon believes that Nash established his rules so people could mix socially without regard to rank, but this was meant only to avoid divisions within the upper classes: Bath, p. 109. Bath entertainments and the degree of their exclusivity are a preoccupation of all who wrote about Bath, from novelists to the authors of guidebooks. From the Pump Rooms--'completely open for the reception of the public, no etiquette of rank being required to obtain an admission, and the only qualification to join the gay throng, without ceremony, is that of a clean decent appearance'--to the Waterloo Gardens, admission 3d.; to the banks of the Avon, where lovers could meet gratis, and where, Egan claims, Sheridan and Miss Linley met, as well as in the pricier Sydney Gardens (Walks through Bath, pp. 74; 111; 195; 204) to the Bath Catch Club, admission 4 guineas, 2 guineas annually and an additional 6s. each club night (Articles to be observed by the members of the Bath Catch Club (Bath, 1792), pp. 3; 6-7), or its successor, the Bath Harmonic Society, where 'Nothing that can offend the most refined ear is suffered to be sung' (Walks through Bath, p. 70), segregation or integration of classes was accomplished by edict, cost or custom. But it was the tendency toward reproduction, with its undercurrent of mimicry, that undermined Bath's exclusivity: see Dickens, Pickwick Papers, for the parallel tradespeople's balls (p. 585) and the servants' clubs (chap. 37).

<sup>9</sup>Neale, Bath, pp. 265-67 and 'Bath 1800-1850', pp. 2; 4.

escaping the embarrassments, financial or otherwise, of the wider world.<sup>10</sup> This shift in emphasis was not without its demographic impact. If the luxury trades and services suffered as the resort declined, and employment opportunities for men dwindled, the need for female household servants multiplied. By 1851, women over the age of 20 outnumbered men almost two to one; there were 10,767 spinsters to 4,057 bachelors and 3,980 widows to 1,086 widowers in the city.<sup>11</sup> For women, Bath was a good place to find a job and a bad place to find a husband.

The bustling city which forms the backdrop for this chapter was in every way a contrast to the county of which

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<sup>10</sup>According to Barbeau, Life and Letters at Bath, p. 213, Bath's new social reputation worked its way into the language. 'Go to Bath' became synonymous with disappearance or retirement, and it was advice given to those 'who have some good reason for leaving their homes, or whom others may wish to get rid of'. It was advice taken by many people, real and fictional. Henry Hunt moved to Bath after his separation in 1802 and took up a quiet life with his mistress: Memoirs, 1:83. William Beckford lived out a life destroyed by a sodomite scandal at Lansdowne Crescent: Boyd Alexander, England's Wealthiest Son. A study of William Beckford (London: Centaur Press, Ltd., 1962), p. 115. Sir Walter Elliott, when faced with the prospect of financial retrenchment, moved to Bath because 'he might there be important at comparatively little expense': Jane Austen, Persuasion (New York: New American Library, 1964), p. 19. And Mr. Pickwick flees London after his breach of contract trial: Dickens, Pickwick Papers, p. 577 (Chapter 35 is entitled, 'In which Mr. Pickwick thinks he had better go to Bath; and goes accordingly').

<sup>11</sup>Neale, Bath, pp. 275-76. There were 167 women over 20 per 100 men over 20 in Bath in 1821; the ratio was 197: 100 thirty years later.

it was a part. Densely populated, with as many as 300 families living in a single street; cosmopolitan, linked by good roads and, in 1841, by railroad, to Bristol and London; a city where houses of worship accommodated Catholics, Jews, Anglicans and most kinds of Dissenter within a small radius, Bath provided employment opportunities--industrial, artisanal and menial--in varieties and numbers unknown outside its perimeter.<sup>12</sup> Class stratification--from the very poor who made Bath their temporary refuge, to the working class with its experience of labour organisation and, in the nineteenth century, radical politics, to the middling tradesmen and the resident and visiting gentry--was more advanced and found its concrete embodiment in the residential patterns within the city. Until the 1830s, wages for the unskilled remained higher than in the hinterland, and this fact,

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<sup>12</sup>The Bath Guide, p. 33, describes the city's religious diversity: 'As persons of every religious persuasion and denomination make Bath a place of residence or resort, so there may be found in it places of Worship for almost every sect; many of which have very large congregations, and not one but is respectably attended'. Bath had been visited repeatedly by John Wesley and was the home of the Methodist split-off, Lady Huntingdon's Connection. Religion, too, was socially stratified. Bath had no fewer than six proprietary chapels, built by private speculators who profitted from pew rents (there were no free seats) and ran their services like entertainments with special preachers and extraordinary music: David Gadd, Georgian Summer. Bath in the Eighteenth Century (Park Ridge, New Jersey: Noyes Press, 1972), pp. 116-17. But see also the Religious Census of 1851, which shows that Bath could accommodate more of its citizens in its many places of worship than most English cities.

coupled with the high demand for skilled artisans, concentrated the county's workforce in the city: the census of 1831 located one-twelfth of the male population over the age of twenty in Bath. These men were mainly 'artisans, masters in a small way of business, or retailers either in business on their own account or working as shop assistants'.<sup>13</sup> Small businesses with little to distinguish masters from their journeymen or production from retailing encouraged mobility. In most trades, those who could raise a little capital and find a few men to practise their skill alongside them could take their chance as masters. Women, who consistently outnumbered men in nineteenth-century Bath, were even more employable and found work in the skilled clothing trades, as washerwomen or, overwhelmingly, as domestic servants. Yet despite the availability of work, unskilled men, who made up 24% of the workforce in 1831, had to rely on the wages of wives and children and occasional relief or charity to keep their families in nineteenth-century Bath.<sup>14</sup> The census does not tally the number of women who

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<sup>13</sup>Neale, Bath, pp. 267-68.

<sup>14</sup>On mobility: Neale, 'Industries of Bath', pp. 134-35; 139; 143. Charities made loans available to those starting out in small businesses. For women's work, the unskilled and inadequate wages, see Neale, Bath, pp. 276-79; 281-82. The Census of 1851 counted 12,266 working women and 10,603 working men in the city. Three thousand of these women were in skilled trades, working as seamstresses, tailors, milliners and shoemakers; more than

supplemented their own meagre earnings, if any, by prostitution.<sup>15</sup>

Neither the waning of the spa nor the flooding of the Avon ended the flow of immigrants into the low-lying working class districts along the southern boundary of the old town, in Upper Walcot and across the river in Dolemeads and Holloway. Neale, in accounting for the political passivity of the Bath working classes, describes them as 'a largely immigrant population lacking any developed sense of community in their new urban environment...they lived their lives according to the precepts of the prevailing deferential ethos'.<sup>16</sup> Yet the relations between masters

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6000 were domestic servants. For some sense of the poverty of many residents, see the description of the relief system instituted in the aftermath of the flood of 1809 in Mainwaring, Annals of Bath, pp. 86-87. More than £1000 were paid out to families whose losses amounted to less than £5, many of whom had lost everything.

<sup>15</sup>Pierce Egan, whose enthusiasm for Bath and dependence on unreliable works of reference make many of his observations suspect, hints at the grey areas between respectable female employment and prostitution when he suggests that women recovered unpaid fees from men by suing at the Court of Request (the debtors' court) 'under the disguised items of a washing bill': Walks through Bath, pp. 170-71. The reality of prostitution was harsher. Both James Woodforde and John Skinner commented on the youth of the prostitutes they encountered. Woodforde, in 1779, conversed with two girls aged 15 and 17: 'I gave them some good Advice to consider the End of things. I gave them O.I.O': Diary, 1:258. Skinner, on a visit to town fifty years later, wrote, 'I was not a little astonished, as I walked through Bath, to observe the streets so crowded with prostitutes, some of them apparently not above 14 or 15 years of age': Journal, p. 231.

<sup>16</sup>Neale, Bath, p. 309.

and servants, shopkeepers and customers, and among the occupants of crowded lodging houses--which form the basis of so many of the defamation causes discussed in this chapter--reveal a sensitivity to reputation across a broader range of classes than we have yet encountered. The participants in these causes were frequently immigrants, but their sense of community, redefined perhaps in terms of a lodging house or a street, is not nearly as deficient as Neale suggests. Nor was the deferential ethos as prevalent or as simple or as free from challenge as he supposes. The hierarchies of deference and respect extended far beyond the servile relationship between visitor and working resident he postulates.<sup>17</sup>

The circumstances under which defamation occurred, the participants in disputes and their relation to one another were peculiar to the city of Bath, as was the increase in local defamation litigation that took place after 1800. The causes that follow describe a distinctly urban world, and they tell us far more about those who earned their living and practised their trades in Bath than they do about those who came down for the season or the cure, more about the working city than about the visiting company. Nonetheless, the social diversity of the litigants, ranging from servants to gentlewomen, suggests that the legal defence of reputation was not restricted in

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<sup>17</sup>Ibid., p. 310.



the same ways as it was in the provincial parishes and that the vulnerability of one's reputation was defined differently in the city. Class lines, rarely crossed by provincial suitors, were violated more regularly in Bath litigation. Deference and the ability to impose economic sanctions may have protected the better-off from litigation in the villages and towns outside Bath, and communal regulation may have had a similar restraining effect on the poor or middling, keeping their feuds out of the church courts. In Bath, the law was far more accessible than it was in most rural areas, and it was frequently resorted to by people of all ranks.<sup>18</sup> The Mayor and Justices of the Peace attended regularly--probably daily--at the Guildhall to administer summary justice, and were hearing as many as 700 summary causes a year in 1777.<sup>19</sup>

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<sup>18</sup>Of the fourteen sets of litigation discussed in this chapter, six mention attornies. Solicitors or their clerks signed the proxies of several litigants, and men whose names, while they do not appear on the list of attornies in the Bath Guide, pp. 129-30, are probably those of attornies (either because they shared surnames with local legal families or were not mentioned as friends or witnesses in the course of the causes) are affixed to others. The absence of proxies in some causes makes it impossible to accurately measure the incidence of consultation with lawyers outside the ecclesiastical system.

<sup>19</sup>Neale, Bath, p. 86. City business, in the early nineteenth century, required the 'almost daily presence' of the magistrates; in addition, a Court of Record and a Court of Request were held regularly and Quarter Sessions were held four times a year to handle misdemeanours: Bath Guide, p. 94; the Rev. Richard Warner, The History of Bath (Bath: R. Cruttwell, 1801), p. 337.

Wells itself was only twenty miles off. The cost of a summons for assault was 1s., and an appeal to the magistrates was both quicker and cheaper than proceeding at Wells, but the two courts were not entirely interchangeable, and in the absence of any physical threat or violence the magistrates may have refused to act.<sup>20</sup> Nor did litigants restrict themselves to the judgements of a single court, for some who brought their adversaries up on assault charges also took the time and spent the money (perhaps in the hope of saddling their opponents with heavy costs) to sue at Wells.

The case material discussed in this chapter is all drawn from the city of Bath, including the parishes of St. Peter and Paul, St. Michael, St. James, Walcot, Lyncombe and Widcome and Bathwick, in the first half of the nineteenth century. It is divided into four sections according to the defamatory situation or the relation between the participants. The first section covers defamation between masters and servants, the second describes the public defamation of women on the street and the third is set in the trading precincts of Bath, its shops and markets. The final, and longest, section is concerned with defamation suits that arose in the confines of the lodging house. A concern with setting has led to the supplementation of the legal record by a variety of

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<sup>20</sup>Neale, Bath, pp. 86-87.

contemporary sources, the most notable of which are novels set partially or entirely in Bath in the eighteenth and nineteenth centuries. Though the city so vividly portrayed in the work of Smollett, Austen and Dickens is largely the temporary city of the Season, peopled with visitors and enlivened by their entertainments, the resonance between this fictional Bath and the Bath revealed in the course of litigation is a strong and edifying one.

## II. Masters and Servants

Relations between masters and servants in a large city could range from those approximating conditions in rural parishes where the boundaries between employer and employee were blurred by physical proximity in work and in repose to those of large and hierarchical establishments where rank was carefully defined and maintained. Servants poured in and out of Bath with their masters, and it is likely that the market in servants was a cosmopolitan one.<sup>21</sup> As servants were less likely to have been previously known to their employers, a good character--often written--could be essential to securing a place. The two causes described

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<sup>21</sup>Neale, Bath, p. 70, concludes from the preponderance of applicants for relief without a settlement in Bath that the majority of servants were drawn from outside the city. Of the eleven servants identified in Bath causes whose place of birth is recorded or suggested, three came from Bath; two from nearby parishes; one each from Wiltshire, Portsmouth and Stratford-upon-Avon; one was probably French; and two, both relatives of their employer, most probably from London.

below illuminate two facets of the master-servant relationship. In the first, a servant takes her mistress to court for defaming her after she has left her service. In the second, a woman is defamed by a neighbour's serving man. The outcome, in both causes, is inconclusive. Mary Ann Baker pursued her litigation against her former mistress for a year before the cause was dropped; Antoine Leturge was sentenced for his defamation, but litigation was abandoned without his having performed penance or paid costs.

The issues raised in the cause brought by Mary Ann Baker against her former mistress highlight traditional tensions within the master-servant relationship: it was Mary Ann's conduct that was being judged, and particularly her disruptive effect on domestic relations.<sup>22</sup> Mary Ann, who had, in April 1829, just left the service of Alicia and Randall William Stone, returned with a chairman to her mistress's house in Walcot to fetch her box.<sup>23</sup> Mrs. Stone

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<sup>22</sup>Baker v. Stone, D/D/Ca 452 (1829) and D/D/C (1829).

<sup>23</sup>Civil and sober ev'ry chairman stands  
Ready to any thing to turn his hands  
In Summer; but when Winter is brought round,  
Bustling and saucy, swagg'ring they are found.

From [H. Woods], A Summer in Bath; in A Series of Letters, descriptive of its scenery, machinery, dresses, and decorations (Sherborne: Langdon and Harker, 1822), p. 62. Colley, the chairman, was gravelling a walk in the fashionable upper town when Baker asked for his help with her box. Like all chairmen during off-season, he had to pursue other employments. Seasonality was nothing, however, compared to the deterioration of the condition of

shut her out after calling her a 'nasty stinking strumpet'. Two days later, answering a summons from Mrs. Stone, Elizabeth Baker, Mary's mother and the wife of a shoemaker, journeyed in from Weston where she had lived more than twenty years and heard the following lament. "Oh Mrs. Baker you don't know what a Character your Daughter is..." and then...Mrs. Stone added "she is a nasty stinking Strumpet, and she will be the means of parting me and Mr. Stone". Mrs. Stone said that Mary Ann "was worse than a Common Street Walker". Mrs. Baker, persevering, asked Mrs. Stone to give her daughter a character 'and Mrs. Stone said she would give her a Character as this--"she is a nasty stinking strumpet"'.

It was not, however, only the behaviour of servants that was subject to scrutiny. Mutual observation and judgement could result, as it did in 1831, in a servant publicly denouncing the morality and sexual habits of a woman who was not his own mistress. What drove Antoine Leturge to abandon his deferential role and to defame Mary Stevens, a woman he was well acquainted with (he had lived in the parish more than a year) is not revealed in the

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chairmen following the introduction of hackney carriages at about this time. Memorials describe the 350 chairmen as taxpayers, fathers of large families and occupiers of houses that rented for £10-£20 per annum. The chairmen, all licensed, had been liable to be called out as special constables: Mainwaring, Annals of Bath, pp. 318-19.

cause papers.<sup>24</sup> The two witnesses called were both dependents of the Stevens family, one an employee and the other a young ward, and their sympathies were entirely with their mistress.

On 15 November, John Brooks, who described himself as a gardener and a chairman, was at work in Mr. John Stevens's garden in Lyncombe Vale when he was called up to the house to turn out Antoine Leturge. He noted that 'several Persons, fellow Servants of...Leturge came backwards and forwards urging him to return to his Master's House and to attend to his Business'. Brooks, who overheard Leturge's abuse, said of Mrs. Stevens that 'there cannot be a quieter or more sober neighbour'. (He may have been classing himself among Mrs. Stevens's neighbours: he was a native of the parish and had lived at No. 10, Waterloo Buildings for the past six months and had known Mrs. Stevens 'many years'.) The second witness, Henry John Dunn, was a ten-year-old schoolboy who had lived with Mr. Stevens 'from his Infancy'. He was home in the afternoon when Leturge arrived, and he heard Leturge abuse Mrs. Stevens 'shamefully':

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<sup>24</sup>Stevens v. Leturge, D/D/Ca 452 (1831) and D/D/C (1831). Methodism, which gained an early foothold in Bath, encouraged a spiritual egalitarianism that could, it was feared, lead servants to criticise their masters. See Squire Bramble's reaction to his discovery of the preaching activities of his servant, Humphry Clinker: Smollett, Humphry Clinker, pp. 169-72. Unfortunately, we do not know whether Leturge had a religious motive for his outburst.

"You are an adulterous Woman, Mr. Stevens brings home his money Saturday nights, and you spend it with other Men--you are a whore"...the Servant Girl of Mrs. Bess came and called...Leturge and told him his Mistress wanted him, but he said he would not go.

Henry said Mrs. Stevens was 'a kind and good Woman to him, and [he had] never heard any Body say she was a bad Woman before'.

Mrs. Stevens had taken out a proxy with her husband within two weeks, somewhat faster than Mary Ann Baker had. Leturge resisted the action to the extent of denying the libel and then objecting to the credibility of the witnesses after their depositions were published. Leturge may have been backed in his expensive defence by his mistress, and the final accommodation which excused him from penance and costs may have been one between Mrs. Bess and Mrs. Stevens, rather than between a mistress and a servant.

### III. Streets

Public defamation, in the hearing of servants, children and neighbours, was not limited to the streets of Bath. However, the victims discussed below differ from some of those described in the previous chapters in that they are all women, and particularly women unattended by men. Sarah Walsh, Maria Squire and Elizabeth Phipps were defamed by male neighbours as they came home in the evening and Sarah Lowe was defamed on at least two occasions by

Mary Davis, a local troublemaker, while her husband was away. None of these were isolated incidents: the depositions and the court records reveal that each of these women suffered repeated public insults, and what eventually led them to prosecute remains obscure.<sup>25</sup>

Mary Davis, like Antoine Leturge, chose to publicly pity the husband of her victim, Sarah Lowe.<sup>26</sup> Hannah Nash, a spinster of about twenty, was cleaning Lowe's house at No. 18, Bridewell Lane one afternoon in 1805 when Mary Davis came and asked if Mrs. Lowe was at home. 'She was just stept out', replied Hannah, and then Mary Davis asked her

if Mr. Lowe was in town or out of town who told [Davis] that he was out of town [Davis] then said You are a damned lying whore for I saw the blasted Bitch of a whore run across the Room Damn her I don't pity her it is the poor man I pity [Davis] then went out of the house and deponent immediately locked the Door but she heard [Davis] cursing and swearing in the Lane...no one was present in the House...excepting [Lowe's] Daughter a Child about ten years of age.

John Clack, a grocer and chairman, was sitting across the street by the fireside in his shop when he heard 'a great noise in the Lane' and went to the door to investigate. He saw Mary Davis storming off, repeating her accusations. His wife, Mary Clack, stood at the counter 'six yards only from [Lowe's] House' and heard the same words. A few afternoons later, Mrs. Clack, who had only

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<sup>25</sup>For instance, Hannah Nash, below, is defamed along with her mistress but does not bring a defamation suit.

<sup>26</sup>Lowe v. Davis, D/D/Ca 440 (1805) and D/D/C (1794-1815).



known Mrs. Lowe four months, though she had resided in Bath the last four years, was visiting her 'very civil and good neighbour' when Mrs. Davis returned and asked again for Mr. Lowe. When Mrs. Lowe said he was away, and asked what she wanted of him, Mrs. Davis replied, 'you blasted whore I don't want you I want your Husband'. Mrs. Lowe told her she did not want her abuse, and Mary Clack intervened and 'desired [Davis] to be quiet to which [Davis] paid not the least attention but still continued abusing [Lowe].' Hannah Nash was no kin to Mrs. Lowe, but had been 'intimately acquainted with [Lowe] all her Lifetime and never heard it questioned by any person whatsoever but that she was always a woman of good character and reputation'. The judge decided in Mrs. Lowe's favour and Mrs. Davis was assigned a penance by interlocutory decree. Mrs. Davis apologised in Walcot vestry for calling Mrs. Lowe a 'blasted whore' and the cause was ended without any mention of costs being paid.

This was probably not the first time Mary Davis had been to Wells Court, and if she is indeed the same person who is named in the actions that follow, she was a familiar litigant. In 1802 a Mary Davis, wife of Charles of the parish of Walcot, was cited for defaming Elizabeth Monk, a spinster of Lyncombe and Widcombe. The next year William Brownjohn, like Charles Davis a Walcot gardener, swore out Articles of the Peace against Davis and his wife. He claimed that he had got into a dispute over carrying manure

across Charles Davis's land on the evening of 21 July, and that Mary Davis had assaulted him and later threatened him in a pub. The Davises must have given security for their future good behaviour, or spent some time in gaol, as a result. Almost a year after that incident, on 25 April 1804, Mary Davis cited William Brownjohn to court for calling her a whore. Brownjohn was excommunicated for failing to appear, but arrived at the next session to confess, perform penance and pay costs.<sup>27</sup>

The victims of Henry William Westropp's defamation are known to us in a little more detail because they acted as witnesses in each other's causes. Sarah Walsh, a widow of about 44, and her niece, Maria Squire, aged 22, were part of the transient population of Bath, having lived at Devonshire Buildings, Lyncombe and Widcombe, for a year prior to the suit.<sup>28</sup> At the time of their examinations they had returned to Bristol, where Squire's father was a

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<sup>27</sup>Monk v. Davis, D/D/Ca 439 (1802); Q/SI 423 (Taunton, 1803): Articles of the Peace; Davis v. Brownjohn, D/D/Ca 439 (1804). There are no assaults involving the Davises at Quarter Sessions, but the Bath magistrates may have done business with them.

<sup>28</sup>Squire v. Westropp, Walsh v. Westropp, D/D/Ca 479 (1810) and D/D/C (1810). Devonshire Building were less than ten years old and had been built for the expanding permanent population: R.E.M. Peach, Street Lore of Bath. A Record of Changes in the Highways and Byways of the City (London: Simpkin, Marshall & Co., Lmt'd., 1893), p. 62; Bryan Little, Bath Portrait. The Story of Bath, its Life and its Buildings (Bristol: The Burleigh Press, 1961), p. 91.

'respectable Merchant'. Walsh, Squire, and their servant, who also testified, were born outside Somerset in Middlesex, Cornwall, and Warwickshire, respectively. The two women, returning home with Walsh's six-year-old grandniece one Friday evening in 1810, rang their garden gate bell to summon their servant to let them in. Captain Westropp leaned over the garden railing and asked Mrs. Walsh what business she had there. She replied that 'surely she had right to ring her Bell for her servant', provoking a stream of 'very indecent Language' from their neighbour. Westropp called them whores and strumpets and, alluding to the child with them, told them to 'get in and take their Bastard with them'.

This was not the first time the household of women had been offended by their neighbour. Mrs. Walsh claimed that Captain Westropp was 'in the habit of using very indecent and opprobrious Language towards her and her niece', and when he made his remarks in May, the women were ready. 'Immediately as they came into the House', they committed the entire incident to paper and told their servant boy, thirteen-year-old William Davis, 'to remember all that passed'.<sup>29</sup> William was an obliging witness,

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<sup>29</sup>It was, Davis said, his first experience as a witness. It had been suggested that he had been turned away as too young by the Mayor or the Court of Request, which further suggests that Mrs. Walsh was involved in other litigation. Davis served Mrs. Walsh about seven months before returning to his father, a guard on the Exeter

and repeated his mistress's exact words. In response to interrogatories he admitted that his mistress had sent him with Grace Watts, his fellow servant, to Mr. Elm's house in Fountain Buildings to inform him of the incident, but that they saw Mr. Webb, an attorney, instead.<sup>30</sup>

Mrs. Walsh and her niece quickly commenced their suits at Wells and seemed as determined to win as their adversary was to resist the suit. Westropp submitted an allegation in March 1811, taking exception to the witnesses, particularly Davis, who had confessed he was 'bound to swear whatever his Mistress wished him to do'. Why, Westropp wanted to know, had other witnesses, such as Grace Watts, been passed over in favour of the young Davis and the interested principals, Squire and Walsh? Gone even before the suit was over, their lack of local connection may have prevented Walsh and her niece from summoning witnesses outside their own household. Besides, by writing down a version of their testimony at the time of the incident and reciting it, or having a young boy recite it

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Mail Coach. Like John Henry Dunn, Davis knew of his birthplace (Stratford) and his christening from his mother; and also like Dunn he accused the defendant of once beating him; 'but for what reason he knows not'. Dunn had been born in Walcot, his widowed mother (a sister of Mrs. Stevens?) lived in Bristol. He claimed that Leturge 'beat him...very much for nothing'.

<sup>30</sup>Edward Webb, with offices in Fountain Buildings, was one of twenty-eight attorneys listed in the Bath Guide, pp. 129-30. In addition there were six barristers and four conveyancers and members of Gray's Inn.

in court, they circumvented the major weakness of the examination process, its reliance on memory. Westropp, frustrated in his defence, took the unusual step of appealing to the Court of Arches.

Just as lawyers were readily available in a city the size of Bath, policemen were more likely to witness public misbehaviour.<sup>31</sup> John Eyres, a night policeman, was present when Elizabeth Phipps, a woman whom he had known for 'several years and never knew her but in quietness and sobriety', was defamed.<sup>32</sup> Eyres was in his mid-forties, was born in Wiltshire, had lived at No. 4, Hanover Square, Walcot, for 'nearly two years last past'--but had probably been in the area longer--and could not sign his name.<sup>33</sup> On Sunday, 1 February 1835, when Eyres was at Bridge Stand within the parish of St. James, he heard Henry Cottle call

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<sup>31</sup>Prior to the Municipal Corporations Act, there were three independent police forces in Bath. Walcot had had its own full-time force since 1793; Bathwick instituted a nightwatch in 1801; and the old parishes were covered by a night patrol, a day patrol under the control of the chief constable and, from 1831, special constables (including chairmen). By 1836 the consolidated force policed the entire area, including the previously unpoliced Lyncombe and Widcombe, around the clock: Mark Roberts and John Wroughton, 'Law and Order in Bath' in Bath in the Age of Reform, pp. 88-93.

<sup>32</sup>Phipps v. Cottle (Henry), D/D/Ca 444, 454 (1835) and D/D/C (1835).

<sup>33</sup>Hanover Square was in an area on the road to Bath described by Egan as 'not above mediocrity'. He continues: 'Here elegance gradually gives way to the minor habitations of little tradesmen and shopkeepers; and business now attracts the attention of the traveller': Walk through Bath, p. 36.

Elizabeth Phipps 'a bloody Whore--a bloody old Whore--and-- a bloody done spending old sow'. Despite the hour, many people were about, including two other policemen and James Storer, a porter and horsekeeper to a Bath carrier. Storer was working at his master's warehouse in Little Corn Street, and was able to put the time at near one o'clock 'as his Master's Waggon and Horses never arrive from Bristol till after twelve o'clock at Night'. Hearing a familiar noise from Cottle's house he looked out the window and saw Mrs. Phipps coming around the corner to the accompaniment of Henry Cottle's curses. He 'observed... Mrs. Phipps speak to the Police Man and he conducted her quietly home to her own Residence, which was close to... Cottle's House'. Storer, a native of Surrey who had resided at Milk Street, two streets away from his place of work, for eighteen months, had known Elizabeth Phipps and her husband William 'for many years before, and since, they were married'.

The noise may have been familiar to Storer because of a long-standing feud between the Cottles and Mrs. Phipps. Mrs. Phipps cited Esther Cottle, Henry's wife, into court at the end of February.<sup>34</sup> Mrs. Cottle immediately confessed to calling Mrs. Phipps a whore and performed penance in court. When Mr. and Mrs. Phipps went

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<sup>34</sup>Phipps v. Cottle (Esther), D/D/Ca 441 (1835) and D/D/C (1835).

to take out a proxy, their witness was James Storer. Presumably the Cottles continued to harass Mrs. Phipps, for she summoned Henry Cottle into court at the end of March. Cottle denied the libel and his proctor submitted interrogatories intended to undermine Mrs. Phipps's character by suggesting that Mrs. Phipps had been 'at different periods delivered of two illegitimate Children and also...[had] been in the habit of keeping a common Brothel or House of ill fame and of immoral tendency in the City of Bath'. These allegations were so standard in Bath causes that it is difficult to see them as more than a diversionary tactic. Bath, after all, was the only place in Somerset where the charge of brothel-keeping might ring true: in July 1820, six residents of the notorious Avon Street were gaoled for keeping brothels.<sup>35</sup> The two witnesses denied any knowledge of the rumour and sentence was read against Cottle on 28 July 1835. Despite several attempts to procure Cottle's appearance to see the sentence executed, the cause lapsed in June 1836.

Public defamation in Bath differed in several ways from that in the rest of the country. There was always the danger of encountering a policeman who might break up the dispute or side with your adversary and become a witness. Pierce Egan may have claimed that 'Rows at night are not very common', but patterns of leisure and employment for

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<sup>35</sup>Neale, 'Bath 1800-1850', p. 17.

men and women guaranteed that sufficient numbers of people were out on the street, or working late at night, to make defamation a public event at all hours.<sup>36</sup> Immigration, tourism and the high level of geographical mobility within the city may have set limits to the numbers of these causes, for whether they took place in Bath or in the market towns they invariably involved neighbours, rather than strangers, who chose to air their grievance in the streets where they and their adversaries were known.

#### IV. Markets and Shops

There were thirty market towns in Somerset, and surely the rivalries between stallkeepers which erupted into defamation suits were not confined to Bath and its daily markets.<sup>37</sup> Markets were an ideal breeding ground for defamation suits because they combined a female presence--women were not only customers, but worked in markets, sometimes alongside husbands and apprentices, and widows continued in business on their own--and the elements of competition and publicity inseparable from a commercial setting. Yet our evidence on suits originating in markets

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<sup>36</sup>Egan, Walks through Bath, p. 171. His conclusion is based on a false assumption about the social structure of the city, discussed in the conclusion to this chapter.

<sup>37</sup>Saturday and Wednesday were the official market days, but the public market was open every day except Sunday. For the various markets, see Egan, Walks through Bath, pp. 166-67; Warner, History of Bath, p. 337; Bath Guide, pp. 104-5; Mess. Ibbetson, Laporte and J. Hassell, A Picturesque Guide to Bath, Bristol Hot-wells, The River Avon and the Adjacent Country (London, 1793), p. 90.



is confined to Bath and comes in the form of two strikingly parallel causes that found their way, more than twenty years apart, into Wells Court. The third incident discussed in this section did not occur in the market, but in a narrow passage lined with shops in the parish of St. Peter and Paul, the commercial quarter of the city. While the two market causes have easily identifiable, and identical, immediate causes--the sloshing of dirty water into another stall--the third cause has more obscure antecedents in a feud between neighbouring shopkeepers. The depositions of the fishmonger-apprentices called in the first cause are full enough to give a feeling for market life and for the relations between husbands and wives and between masters and servants. The depositions of the boys in the final cause do not neglect either commerce or power relations, but they take us within a household, where the complex balance between male and female, married and unmarried, and kin and non-kin had to be maintained.

Bath Fish Market on Tuesday, 1 April 1828, was the setting for the dispute between Sarah Fisher and Harriet Tozer.<sup>38</sup> Initially, Mrs. Fisher objected when Mrs. Tozer's apprentice dumped his dirty water into her stall toward the end of the day. Recriminations mounted, Mr.

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<sup>38</sup>Fisher (Sarah) v. Tozer (Harriet); Tozer (Harriet) v. Fisher (John); Tozer (Harriet) v. Fisher (Sarah), D/D/Ca 451 (1828) and D/D/C (1828).

Fisher intervened, and Mrs. Tozer defamed Mrs. Fisher by calling her a whore.

The first witness called by Mrs. Fisher was the Dickensian John Eleazar Pickwick, who signed his name with a flourish.<sup>39</sup> He was a twenty-five-year-old fishmonger employed for the 'greater part' of the past six of seven years by Sarah and John Fisher. Born at Portsmouth, he had 'resided in Bath...and its suburbs for the last ten years' and was then a resident of St. James. At about four o'clock in the afternoon

he went to the Standing in the Fish Market, Bath, of his Master the Husband of the Plaintiff...and observed the man Servant of the Defendant's Husband taking up a Tub, which it appeared he had been using to clean down the Pavement under a Fish standing, where the Fish is usually kept, and from which dirty water had been thrown, so far as to come over his (Deponent's) Master's Standing, and Deponent then heard his Mistress...say it should not be done, and his Master...shortly afterwards came up and asked Deponent what was the matter, but Deponent made no reply and his Master directed him to pack down the Fish, upon which Mrs. Tozer...called his (Deponent's) Master "swaggering Jackey"...and then his Master turned round and asked Defendant what she meant by it, and she again cried out "swaggering Jackey" and put her hand under his Master's nose and swayed it backwards and forwards and several times repeated..."swaggering Jackey"--that Mrs. Fisher

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<sup>39</sup>The Pickwicks had been in Bath long before Dickens discovered them. The family was 'conspicuous in the civic magistracy before the Municipal Reform Act': John Earle, Bath Ancient and Modern (London: Longman, Green, Longman, Roberts, and Green, 1864), p. 248; and Eleazar Pickwick, Esq., was mayor in 1827 and had been a magistrate from 1820 until at least 1835: Mainwaring, Annals of Bath, p. 277. Dickens was inspired by Moses Pickwick, who kept the White Hart Inn and was proprietor of the London-Bath coaches: Pickwick Papers, p. 582. Various Eleazar Pickwicks had done both: Haddon, Bath, pp. 128; 148.

then asked her husband if he allowed her, Defendant, to put her dirty fingers in his face, upon which, she, Defendant, addressed herself to his...Mistress...and said "you rotten Mess"...and then turning round on her heels she cried out "you rotten Bitch" and followed his Mistress...to the Counting House and then turned back and passed by where Deponent was standing and cried out "Ah! Ah! you rotten whore" meaning the Plaintiff...and the Defendant then went to her Husband at the Entrance to the Fish Market and shortly afterwards went away.... Edward Gaites...and a Man who is Hostler at the White Lion Inn (but whose Name he does not know) were present...and that there were many other persons present who are strangers to him...[he] never saw his Mistress...behave or heard of her behaving otherwise than a prudent, sober and virtuous woman.

Market women, like female publicans, had public characters that were bound up with their businesses. Pickwick noted of his mistress that 'many of her acquaintances expect her to clear up her Character', and these acquaintances may well have been Mrs. Fisher's customers.

Edwin Gaites had an equally keen sense of the negative value of the publicity their mistress had received. Gaites was a few years younger than Pickwick, had resided since birth in Bath and had 'never heard a disrespectful word said of Mrs. Fisher'. His present address was Walcot, and he, too, described himself as a fishmonger who had worked 'the whole of the last six years' for Mr. Fisher. He was employed with his mistress in dressing a crab when

a Tub of Water was Upset or thrown down by Isaac Watts, who works for Mrs. Tozer...and [their] shoes were nearly filled with water...[Mrs. Fisher] turned round and said "For God's sake Isaac what are you about?" and...Isaac Watts replied..."I don't care, it's after four o'clock"; meaning, as Deponent supposes, that it

being after four o'clock he had a right to throw water where he pleased to clean out the standing, which each Person is required to do before quitting the Market ...[Mrs. Fisher] desired him to go for his Master, which he did, and in about half an hour afterwards, Mr. Fisher...came into the Market, at which time several persons were present and Mrs. Fisher...was crying, and Mr. Fisher then asked John Pickwick...what was the matter, who replied...that Isaac Watts had upset a Tub of Water and wetted his...Mistress's shoes, upon which Mr. Fisher turned round and asked...Watts how he came to do it, who...said "It's after four o'clock, Sir", and Mrs. Tozer...then said to...Watts "why do you Sir such a thing as that, you are better than he such a swaggering jackey as he is" Mrs. Fisher...then told Mrs. Tozer...she had better mind what she was saying...[Mrs. Tozer replied] "You - you stinking Strumpet, what do you mean" Mrs. Fisher then asked her Husband, if he allowed Mrs. Tozer to becall her like that upon which...Mrs. Tozer said "who do you think cares for such a thing as that" and put her hand at the same time in his...face, quite close, moving her hand backwards and forwards, and crying out "there, swaggering Jackey" many times; upon which Mrs. Fisher...asked her Husband if he allowed...Mrs. Tozer to put her dirty hands in his face, and Mrs. Fisher then put her arm over her Husband's shoulder and pushed Mrs. Tozer's hand away, saying at the same time she would make her...know that she should not put her dirty hands in her...Husband's face - upon which...Mrs. Tozer...said [to Mrs. Fisher] "You - you nasty Mess - you - you rotten Bitch - was I able, I would give it to thee" and then walked up to the end of the standing and said "Yes I would - you nasty rotten Whore" and shortly afterwards Mr. Tozer...took his wife by the arm and they walked away - that John Pickwick...immediately after Mrs. Tozer had called his Mistress a nasty rotten whore, said to Deponent "Ted" (by which name he frequently called him...) "did you hear what she...called Mistress" and on Deponents repeating the words...Pickwick said to Deponent "Now is not that too bad - to call my Mistress a nasty rotten whore in the open Market".

The legal ramifications of this incident were extensive if inconclusive. Sarah Fisher called Harriet Tozer into Wells Court two weeks later, and a month after that Harriet Tozer initiated a countersuit against Sarah

Fisher for calling her a whore. Presumably because of the push Sarah Fisher had given her, Tozer felt she had grounds for an assault prosecution and a true bill was brought in against Fisher at Easter Sessions. The witnesses were Tozer herself and Jane Dunsdon. John Fisher, who had endured some of Harriet Tozer's verbal abuse (none of which was actionable in the church court) was less successful in bringing Tozer up at Midsummer Sessions.<sup>40</sup> Despite the evidence of Edwin Gaites and Abraham Wickham, no bill was found. This drama of suit and countersuit did not reach any clear resolution. Tozer dropped her Wells suit after three sessions, and Fisher was dismissed with £2 19s. Od. in costs. A few days later Mrs. Tozer cited John Fisher to Wells, but this cause, and the initial one brought by Sarah Fisher, were abated by Tozer's death, announced in court in early October.

While it is true that the main actors in this dispute were women, and the legal action was almost entirely between women, John Fisher was not without his role. Summoned by his wife at the first sign of trouble, Fisher did not escape unscathed by Harriet Tozer's tongue and, it seems, he did not fail to retaliate in kind. That Fisher was caught between the two women, the provocative Tozer and his own wife, did not go unnoticed by his apprentices. How much of the legal proceedings were

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<sup>40</sup>Q/SI 448 (Easter, 1828) and (Midsummer, 1828).

motivated by the unique need of these women to restore their business reputations, and how much by a desire for revenge and harassment, cannot be determined at this distance. Yet Pickwick's words and Sarah Fisher's tears suggest that these public insults were humiliating and hurtful. If these causes emphasise the continued vitality of female sexual reputation, and the power of words publicly spoken to harm a woman's fame, they also remind us that male sexual honour had become a more elusive concept, less subject to damage and less readily defended.

'Swaggering Jackey' was not actionable in the church courts; even if Mrs. Tozer had been sexually explicit in her insults his cause would not have been accepted at Wells at this late date. The flaw in Fisher's suit at Quarter Sessions is hidden from us: the jury may have denied him for substantive reasons or on account of the delay in bringing the action. A slur on Sarah Fisher's character may have been the only vulnerable point in John Fisher's sexual honour, and the only restitution he could seek was through the legal action of his wife.

Twenty-two years later, in 1850, reputation was still of concern to market women. Caroline Clack, a widow who kept a stall at the Butcher's Market, was washing a basket and 'splashed the Water she was using upon the ground of Mrs. Baker's Stall'. Mary Baker, who kept her stall with her husband John, called Mrs. Clack 'a nasty

drunken old whore' and Mrs. Clack asked her to 'repeat that again will you'. The Constable of the market, Isaac Adams, then intervened, saying 'I will have no noise here'.<sup>41</sup> This did not stop Mrs. Baker who told Mrs. Clack to 'go down to Westgate Buildings behind the door'.<sup>42</sup> 'I'll have no words here', Adams repeated, and sent the women back to their stalls. Andrew Dillon, a young butcher who had witnessed the incident, thought that Mrs. Clack's reputation had been greatly injured.

This was not the first time the women had tangled. Another witness, Louisa Jefferis, a forty-two-year-old widow, had been present in October when hostilities between Clack and Baker reached the defamatory stage:

Mrs. Clack's little boy was playing with a Marble or Ball and Mrs. Baker took it up which caused angry words between [them] and Mrs. Baker said..."you are a jumping or a drunken whore" I cannot swear whether she...said "jumping" or "drunken" but distinctly heard Mrs. Baker call Mrs. Clack a Whore and at the same time Mrs. Baker called Mrs. Clack a Strumpet a Trollop a Bitch and a

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<sup>41</sup>Clack v. Baker, D/D/Ca 444 (1851) and D/D/C (1851). Egan, Walks through Bath, p. 166, a comments on the 'convenience, cleanliness and good order' of the markets. No doubt the constable had something to do with this, but it looks as if the lid were just barely kept on.

<sup>42</sup>The reference is obscure. Westgate Buildings had sunk a bit since the Duke of Chandos built them, though Egan still described them as a 'plain neat row of houses': Walks through Bath, p. 98. See Sir Walter Elliott's outbursts against his daughter's plan to visit her friend, Mrs. Smith, at that address; Mrs. Smith's circumstances are so reduced that she inhabits a 'noisy parlour, and a dark bedroom behind' and shares the only servant in the house: Austen, Persuasion, pp. 145-50.

Cat - I was about then to leave the Standing where I was (which was an empty one) to go to my own.

Mrs. Jefferis was more than a market acquaintance and had known Mrs. Clack since she had moved to Bath nineteen years previously. She had known the defendant 'about the same time but I have not been as much acquainted with Mrs. Baker as I have been with Mrs. Clack'. Perhaps Mrs. Clack lived, like Mrs. Baker, in Galloway Buildings, not far from the market.<sup>43</sup>

Mrs. Clack brought her adversary into court in December and her cause moved rapidly to conclusion. The witnesses appeared voluntarily and the defendant offered no allegations. The court was hardly overwhelmed with the pressure of other business, yet sentence was not read against Mary Baker until October 1851. She appeared at the next session and performed penance in court. The enormous costs were taxed at £21 9s. 11d. and when Mrs. Baker did not pay, her contumacy was signified to Chancery. The sum of £21, which hardly reflected the length or complexity of the legal proceedings, must have been a small fortune to someone keeping a stall at Bath Butcher Market.

Union Passage, described by Jane Austen as 'that

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<sup>43</sup>Galloway Buildings was erected in the 1740s and, as it 'had not fulfilled its developers' expectations', was an undesirable address: Little, Bath Portrait, p. 50 and Neale, Bath, p. 274. Despite the unfashionable addresses (and they may have been partly dictated by proximity to the markets), all the market people involved in defamation litigation who were called upon to affix their signatures to documents, did so.



interesting alley', was a likely location for commercial rivalry, but the litigation which kept the Baines and the Lawley families before the church courts and the magistrates for four years gives no clue even to the business pursued by Joseph and Charlotte Lawley.<sup>44</sup> Instead, tensions within the Baines household--of which Susanna Biffin, the plaintiff in the ecclesiastical cause, was a member--and conflicts between the family and their neighbours filled sheet after sheet of depositions, allegations and interrogatories. The actual defamatory words spoken by Charlotte Lawley were of little importance to the proceedings, but sexuality in many forms is used throughout the cause to characterise the Baines household. The illicit sexual activity described by the defence, all of which centres around Biffin, functioned both to undermine Biffin's reputation (thus diminishing the seriousness of her charge) and to suggest that the household of which she was part was ill-regulated, raising doubts as to whether any truth could issue from such disorder. Not only is Biffin accused of carrying on an

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<sup>44</sup>Until the early nineteenth century, Union Passage had been the street that connected the upper and lower towns: Mainwaring, Annals of Bath, p. 6. It was replaced in 1806 by the new Union Street (p. 57). Jane Austen was referring to the earlier street in Northanger Abbey (New York: New American Library, 1965), p. 35. Anne Elliott and Captain Wentworth have their grand reconciliation in Union Street, in a more modern Bath, and move off to the 'quiet and retired' Gravel Walk: Persuasion, p. 228.

incestuous relationship with her sister's husband which ultimately results in the birth of a child, but her fellow servants are portrayed as running off at all hours to gossip with their neighbours, and her sister is indirectly criticised for abandoning her family several times a year to travel to London on business. The close scrutiny that the Baines family is subjected to is not balanced by a similar attention to their adversaries: we know little more of the Lawleys than that they maintained a solid alliance with another neighbour, Charles Gowen, that extended from the courtroom to the shop.<sup>45</sup>

Susanna Biffin was employed as a shopwoman and domestic servant by Henry Baines. Baines ran a toy business out of a shop in the bottom floor of his house at No. 18, Union Passage.<sup>46</sup> The household included at least six members and the ties between them were mediated by kinship and dependency. Besides Henry, his wife Mary and Susanna Biffin (who was Mary's unmarried sister), there were a number of servants; one, at least, related to Mary Baines. George holder, a thirteen-year-old boy who came to live with the Baines family after one of Mrs. Baines's

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<sup>45</sup>It is possible that the Lawleys were Catholics: a marriage between Joseph Lawley and Charlotte Perry, performed in 1823, is recorded in Williams, ed., Post-Reformation Catholicism in Bath, vol. 2: Registers, 1780-1825, p. 195. For further comment on Catholics in Bath, see Wickham v. Lockyer, below.

<sup>46</sup>Biffin v. Lawley, D/D/Ca 441 (1834) and D/D/C (1834).

trips to London to buy toys, was the stepchild of another Biffin sister who lived in London. Robert Bird, Holder's fellow witness, aged 17 and upwards, described himself as a trunkmaker and gave his address as 'No. 18 Union Passage...where he has worked, and resided by day, for Eight Years last past, born at Beckington'. Bird had been an outdoor apprentice to Henry Baines for nearly five years and since the death of his mother, a month before, 'Mrs Baines had allowed him to have part of a Bed in his Master's house', though he continued to find his own meals. There was at least one other female servant in the house, and she shared a bed with Susanna Biffin.

Holder and Bird both agreed that Susanna Biffin had been defamed by Charlotte Lawley around nine o'clock on the morning of 6 December 1833. The boys had stood listening to a dispute between Mrs. Lawley and Mr. Baines when Susanna Biffin, coming down into the shop, commented, 'What! is she on again'. This brought Mrs. Lawley to her own shop door across the way to exchange words with Biffin, who had gone outside to arrange the goods in baskets. 'Go in you Whore', said Mrs. Lawley, 'Go in you stinking Hussey. Go in you good-for-nothing Whore'.

Had Mrs. Lawley experienced the proper amount of contrition, the cause papers would have recorded this rather straightforward incident with only the hint that disputes were common across the passage ('What! is she on

again'). Instead, succeeding papers in this bitterly contested suit uncover layer after layer of intrigue. The contribution of adolescent imagination and the desire for revenge coupled with the narrow focus of the proceedings make it impossible to determine how much of the intrigue had substance. Instead, we must examine the attacks on the characters of the plaintiff and the witnesses. It is here that the concerns, real and imaginary, of a household and its neighbours are most clearly delineated.

Charlotte Lawley's proctor submitted four pages of interrogatories and Bird and Holder were duly examined upon them. Many of the standard questions are included: those intended to determine the degree of dependency between witness and plaintiff (through kinship or employment); to demonstrate ignorance of the meaning of the oath; to measure the extent of the witness's knowledge of the plaintiff; and to make overt simultaneous prosecutions in other courts. Where, in the eighteenth century, much of this information had been sought, and given, under the heading 'Are you any kin to the producent?' causes in the nineteenth century multiplied the questions asked and pursued detail often to the exclusion of the general point.

The defence then gave its version of the events under the guise of asking a series of verifiable questions to be answered by Bird and Holder about the actions and character of the plaintiff. Biffin had provoked Lawley by

calling back to her, 'Go you nasty hussy go bind your shoes, go mend your stockings' and, 'tauntingly', 'who wanted to go to Marshfield with a Soldier and was obliged to come back in a waggon?'<sup>47</sup> When Charles Gowen led Mrs. Lawley into her inner room, Biffin cried out, 'Ah you are obliged to go, you cannot stand to hear it, you nasty stinking faggot'. Though provocative, these words could not form the basis of a countersuit. The next object was to undermine Susanna Biffin's reputation by suggesting that she had engaged in illicit sexual activity. She had allegedly allowed Henry Baines to take 'liberties' with her; and Holder had seen Bird 'put...Susanna Biffin on a Table and put his head under her Frock or petticoats', an event which he reported to the ubiquitous Charles Gowen. During the trip Mrs. Baines took in the past year, Susanna Biffin had given birth to a child and Henry Baines, in a father-like manner, had fetched the midwife and the doctor, had arranged for the christening and had then sent the infant away to nurse. Sometime afterward, Biffin had sent George Holder upstairs to her bedroom to fetch money from the purse she kept under her pillow, where Holder discovered a slip of paper with what he supposed were the name of the child and the days of its birth and death, 15 May and 9

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<sup>47</sup> Marshfield was five miles outside Bath on the way to Oxford. The Marshfield mummers still perform there on Boxing Day: Bettey, Wessex, pp. 102; 135.

July, written on it, a fact he immediately reported to Bird, who in turn alerted the neighbourhood. Finally, the interrogatories returned to the more familiar theme of coercion. The witnesses were asked whether Henry Baines had offered a potential witness, a mason working nearby, £5 to swear that Mrs. Lawley had called Susanna Biffin a whore. (Both witnesses had volunteered that people were passing in the street when the words were spoken). They were then queried as to the bribes they had accepted from and the instructions they had been given by their master.

Robert Bird's answers, while they do not provide a very consistent defence of Biffin, offer tantalising glimpses into household and neighbourhood. He had taken several oaths already and had been a witness before the Bath magistrates, once on the occasion of a dispute between his master and Mr. Lawley. Susanna Biffin's history since her arrival three or four years previously was well-known to him. She had been employed by Mr. Baines 'for a twelvemonth to look after a House he had at Twerton, in which Beer was sold, but she came to Union Passage almost every week, as Mr. Baines was most days at the House at Twerton himself, tho' he did not sleep there'. Susanna Biffin had also lived with Henry Baines 'for a short time about a twelvemonth before she came to live with him as a Domestic (which was before Mr. Baines carried on Business in the Toy Trade) and after that went, as he understood, to

live with her Sister at Cambridge'. He was equally well-informed as to Mrs. Baines's schedule. 'She generally goes to Town twice or thrice in the Year to buy Toys', and had been gone last May for the usual fortnight. Bird, an outservant at the time, had no knowledge of night-time activities, though he added that if there had been a baby 'he must have heard the Child, as he was in the Month of May last daily at Work in the House up Stairs above the Shop'. George Holder had come to him last July with the story of the slip of paper, but claimed he could not make out anything on it except one date. 'He promised to look again at the Paper', but the paper disappeared before he had the opportunity. Charles Gowen later asked Bird if it was true that Biffin 'had been confined and delivered of a Child', to which Bird answered that others had asked him, but he knew nothing beyond that 'it had been so reported'. He then told Gowen about the slip of paper. Biffin 'behaved modestly, and never indulged in low or vulgar Conversation' (despite her remarks to Mrs. Lawley, some of which he admitted to hearing) and he had never seen anyone take liberties with her. Mrs. Lawley had, by speaking defamatory words, injured Biffin's character 'in the opinion of those who live near her'. As one might expect, Bird denied any wrong-doing on his master's part, saying that Baines 'went to some workmen near, to ascertain if they heard the defamatory Words'. He had offered Bird no

reward, and had told him that very morning 'to speak the truth'.

George Holder had likewise appeared before the magistrates at the behest of Mr. and Mrs. Baines 'who had a Summons for Charles Gowen for wheeling a small four-wheel Carriage over Mrs. Baines' feet'. He was no kin to Susanna Biffin, he declared, 'but his Father's present Wife is a Sister of...Susanna Biffin', a distinction between blood relations and those acquired through consecutive marriages which was to be modified in other parts of Holder's testimony. He was not an apprentice, though he had had room and board at Mr. Baines's since he had joined the household nine months previously, as a result of Mrs. Baines's fateful trip to London. Susanna Biffin, whom he referred to as 'Aunt', had come to live with his father and 'mother-in-Law' in London 'about Five Years Since' and had stayed about a year.

Holder's description of events differed little from that of Robert Bird. He recalled some of Biffin's remarks, including '"you shall be treated to Marshfield with a Soldier"', which the defendant's proctor found provocative enough to include in his allegations as well as in his interrogatories. He considered his aunt sober and virtuous and had 'never heard any person say otherwise of her but Mr. and Mrs. Lawley and Charles Gowen'. He denied telling anyone of any sexual activity of Biffin's either with



Baines or with Bird, 'for never having seen any thing of the kind he could not tell it to any one'. The paper he discovered did have the word 'Christened' on it, 'but he could scarcely make out any thing thereon' and could not tell what it was. He, too, denied any bribery by his master and likewise remembered his admonition 'to speak the truth'.

The defence then offered a series of allegations, some of which were admitted, none of which was submitted to proof (no further witnesses were called), which, regardless of their veracity, did much to paint a picture of a household rife with the sexual tension generated by the presence of adolescent boys and unmarried women. The evidence presented in these allegations was apparently gathered from neighbours, particularly Charles Gowen, of No. 12, Union Corridor, and Agnes Bennett, of 18, St. James Parade, who had been the repositories of Bird's and Holder's secrets.<sup>48</sup> Gowen, who witnessed the proxy of Mr. and Mrs. Lawley, had, as we have seen, engaged in his own litigation before the magistrates with the Baines family.

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<sup>48</sup>The 'Corridor', which extended from the marketplace to Union Street, was opened in 1825. It was modelled after the Burlington Arcade in London: Mainwaring, Annals of Bath, p. 266. St. James Parade had a 'very respectable appearance': Egan, Walks through Bath, p. 99. It was built to house the lower middle classes: Bryan Little, The Building of Bath 47-1947. An Architectural and Social Study (London: Collins, 1947), p. 96.

The allegations, some of them lengthy, pay perfunctory obeisance to the traditional forms. Susanna Biffin's character is once again traduced and she is accused of verbally provoking Charlotte Lawley. Mrs. Lawley's defamatory activities are staunchly denied and her propriety and respectability are emphasised. Thereafter, the material is derived from stories the boys were supposed to have told their neighbours. Robert Bird had heard from the serving girl--who was supposed to share a bed with Susanna Biffin, but found herself sleeping alone in Mrs. Baines's absence--that she had ventured downstairs in her loneliness only to discover Henry Baines putting his head under Susanna's clothes. On hearing this tale from the unnamed serving girl, Bird made a 'scotch' (a peephole) so that he could look into his master's sitting room, and he was rewarded by catching Susanna Biffin sitting on Henry Baines's knees, his hand under her clothes, Biffin 'kissing him up to the eyes'. The vigilant serving girl also told Bird that she had discovered a baby's shirt and cap in Susanna Biffin's pocket, evidence that confirmed in his mind the rumours that Biffin 'must be in the family way'. Bird was said to have repeated all the information on Holder's discovery of the slip of paper to Charles Gowen, who wrote it down on a slate and sent for Holder, who verified it. Gowen emerges as the confidante of both boys: '[O]n many occasions...Bird and...Holder ran into the Shop

of...Charles Gowen and told...Charles Gowen and his Wife in a jocose manner that certain defamatory expressions relating to...Susanna Biffin were written upon the shutters of...Henry Baines their master and upon the shutters of the neighbours', and the boys 'used to talk openly' of Biffin's childbearing.

The defence made much of these graffiti, for they triumphantly deduced that Susanna Biffin's bad reputation had to be a common fame once it had been broadcast on the shutters of the neighbourhood. According to the allegation, Bird had since acknowledged the truth of these stories to Mrs. Bennett and her husband John, and when reminded of his duty and asked if Mrs. Lawley 'could have so forgotten herself as to use the word "whore"', he hesitated and then answered, "he had sworn to it and would now stick to it". Yet he paid a price, for he added that "this business had so harassed him that he had been nearly led to commit suicide and had many a restless night and had not only thought much but prayed much about it" whereupon he was admonished to do whatever he could to relieve his conscience and [he] then said "he would consult his Master". Nor was Holder neglected, for besides leaking the contents of the slip of paper, he had been heard to say 'in reference to the...child of which he was called the Uncle by someone standing by--"that the child was going to be christened on the morrow and I am going to be

Godfather". Here was kinship further mystified, for surely Holder was, if anything, cousin to Biffin's child, unless of course the difference in age between George and the baby was deemed sufficient to promote him into his 'aunt's' generation.

In March 1835 Charlotte Lawley's proctor announced his intention to appeal to the Court of Arches after the rejection of his allegation and no further notice was taken of the cause in the Act books. Two years later, in the autumn of 1837, hostilities were still raging in Union Passage.<sup>49</sup> Mary Baines, who continued to live with her husband, took Joseph Lawley to court for calling her a whore. The witnesses both appear to have been relatives of the plaintiff: Sophia Biffin, singlewoman, also of Union Passage, and Matilda Biffin, singlewoman, of Bathwick Hill in the parish of Bathwick. Once again allegations were submitted and judged inadmissible: when one was eventually accepted, witnesses were called to prove it, among them Ellen Lawley, a spinster. The judge decided in favour of Mary Baines in August 1838, but Joseph Lawley was ordered to pay only half of the more than £25 in costs. He performed his penance in court a year after he defamed Mrs. Baines and the cause was mutually ended on 27 November 1838.

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<sup>49</sup>Baines v. Lawley, D/D/Ca 442 (1837) and D/D/C (1837).

In this later cause we have lost sight of Charles Gowen, George Holder, Robert Bird and Susanna Biffin. The sentence is the only cause paper to have survived: even the proxies may have given evidence of the old alliances, of a Gowen or a Bennett. Holder and Bird may have moved on in the nature of things, Holder back to his family and Bird, close to 21, released from apprenticeship. The unmarried Biffin women, whether sisters of Mary Baines or younger relatives, were still circulating among their married relatives, but the whereabouts of Susanna Biffin, who had already lived with sisters in London, Cambridge and Bath, go unmentioned.

The Baines household, at least in the earlier cause, gives the impression of a beleaguered citadel subjected to a neighbourhood conspiracy, its internal defences weakened by imaginative, gossiping dependants. Surely local disapproval did not start and finish at the presence of an unmarried sister in the house, a common enough occurrence even in that neighbourhood. (Ellen Lawley may have been a sister or a daughter). Susanna Biffin may have been a particularly objectionable relative, but there is no evidence of the sort of repercussions within the marital relationship that one might expect in the wake of the affair described in the cause papers. Mary Baines had trusted her sister alone with her husband long before the defamation litigation began and she had had

ample opportunity to send her off to another sister after the supposed birth of her child, yet it was Mary Baines who witnessed Biffin's proxy when she went to court against Charlotte Lawley. Biffin may, in fact, have borne a bastard fathered by someone other than Baines while living with her sister and brother-in-law. If so, her kinspeople paid a high price in gossip and rumour for their support and protection. We cannot penetrate very deeply into the way Mary Baines balanced family loyalty, conjugal solidarity and her animosity, commercial or personal, toward her neighbours. Indeed, we can only speculate as to why Susanna Biffin became the focus of Charlotte Lawley's attacks in public and in court.

It is easy enough to see how, once Susanna Biffin went to court, her reputation could be so thoroughly mauled by clever manipulation of gossip and suspicion. Unmarried and left regularly with her sister's husband, Biffin could be accused of committing adultery and incest and even of bearing an illegitimate child without straining anyone's credulity. In a household that included at least one boy old enough to take a sexual interest in her, Biffin's presence may have spawned enough erotic phantasy, frustration and--if Bird did indeed stick his head under Biffin's petticoat--jealousy, to convince sufficiently interested auditors, such as Gowen or Mrs. Bennett, of Biffin's misconduct. Robert Bird, in turn, is said to have

gathered much of his intelligence from Holder and the serving girl, both of whom may have had good reasons for wanting to please him. Ultimately, the spying that was supposed to have gone on within the Baines household was curiously unproductive. Bird makes a scotch to peep into the sitting room: one can as easily imagine that scotch opening into the bedroom. The serving girl finds her bed empty and goes innocently in search of her bedfellow, but no one finds the master's bed illicitly occupied. The sexual activities described are largely playful and, in the case of the heads- or hands-in-petticoats episode--non-procreative. The discovery of a few baby clothes and a paper with or without a name and a christening date on it are as close as anybody comes to acknowledging the birth of Biffin's child.

What brought Susanna Biffin to Wells Court is more difficult to pinpoint. She was not the first member of the Baines household to tangle in court with the Lawleys or their ally, Charles Gowen, and the precise form of her involvement in what could have been a well-established neighbourhood feud may have been dictated as much by her status as a dependent spinster as by any activity on her part. The reputation of an unmarried woman was more difficult to defend than that of a married woman, because a married woman had both a clearly defined sexual role and an institutionalised protector in the shape of a husband.

Susanna Biffin, like Betty Tutton and even more like Susan Dorney, operated in an environment in which the sexual mores of young adults--the limits of courtship in particular--were in flux. Spinsters, even those whose families staunchly defended them, were unusually vulnerable to attack and peculiarly unable to vindicate themselves. That the sexuality of these women was still subject to communal control is shown by the references to the words written on the shutters in Union Passage. Whether or not Susanna Biffin did bear a bastard--Henry Baines's bastard--and whether or not her neighbours actually expressed their disapproval by advertising her crime in this way, the suggestion that they could have done so is not subject to question. The Lawleys may have intended to harass their main adversaries, Mr. and Mrs. Baines, by mounting a public and very compromising campaign against the reputation of one of their dependants; or, once in court, they may have decided to revenge themselves upon Biffin by attacking her reputation. In any event, the Lawleys were able to mine the vein of the suspicious proximity of a married but temporarily spouse-less master and his unmarried servant to discredit an entire household and, eventually, to extricate themselves from what promised to be expensive legal proceedings. That the relationship described was incestuous may have added spice to the gossip but is never made explicit.



The first two causes discussed in this section illustrate the way in which the publicity of the market place, combined with the necessity of maintaining a working reputation (for we hear nothing of female customers defamed at market) made market women eager to prosecute their defamers. Business considerations could make verbal insults more potent, or they could determine a course of legal action that was simply an extension of previous competition, but the tears shed by Sarah Fisher suggest that words like whore and strumpet, uttered before a crowd made up of dependants, customers and strangers, still had the power to wound. Commercial rivalry, of course, could lead to more violent abuse. (Hannah Hedges, the wife of a Bristol whipmaker, accused Robert Whitmore, a whipmaker of the same city of assaulting her with a horsewhip at Binegar Fair in 1806. Mrs. Hedges frequently attended fairs without her husband, to sell his goods, and had twice before been attacked by her rival.)<sup>50</sup>

The case of Susanna Biffin is more complicated, and the differences between this suit and those that preceded it require emphasis. Biffin appears to have been a minor participant in a local feud until her confrontation with Lawley. Commercial rivalry may have been at the heart of a feud in which all of the principals were shopkeepers, but

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<sup>50</sup>Q/SI 426 (Bridgewater, 1806): Articles of the Peace.

the actual defamatory incident involves two women of unequal status (unlike Tozer and Fisher or Clack and Baker) and it takes place when customers are not yet about. This makes Biffin's reasons for prosecuting rather different from those of Fisher or Clack, and it may explain why Lawley, unlike Tozer and Baker, was so unwilling to confess or to settle. The litigation focuses far longer and far more intently on the plaintiff's character and milieu, suggesting that Biffin's status, public and private, was more precarious than that of the market women, the married Fisher or the widowed Clack. This could be attributed to the already equivocal reputation which Lawley goes to such lengths to establish, or it may reflect the vulnerability of Biffin's subordinate position within the Baines household. If, like Susan Dorney, Biffin gave birth to a bastard, she was made to suffer both in the community, by Lawley's words and the graffiti, and in court. If she did not, her involvement in the local and legal affairs of her sister and brother-in-law subjected her reputation to a remarkable amount of abuse.

#### V. Lodging House

The lodging house, an institution by no means peculiar to Bath, was far more common in that city than in other parts of the country, and the numbers of lodgers in each dwelling was usually greater than in the market towns

and villages outside Bath. Celia Fiennes found 'severall good houses built for Lodgings that are new and adorned' (though costly) when she visited the city; in 1694 there were already twenty-nine lodging houses in Bath. Thirty years later, the Duke of Chandos built Westgate Buildings to house seasonal visitors, charging 10s. per week for a room and half as much for a kitchen or garret. With as many as forty rooms, seventeen garrets and seven kitchens in a single house, Chandos and his landladies could expect a good income.<sup>51</sup> In 1799, Warner counted 438 lodging houses and nineteen boarding houses in Bath: in the parish of St. Peter and Paul the rectory was the sole building that was not dedicated to trade or the accommodation of lodgers. The Bath Guide of 1817 observed that lodging houses were too numerous to list, 'as nearly every house, not absolutely tenanted by nobility and gentry, is a lodging house'. Directories at mid-century list more than 200 lodging-housekeepers catering for the visiting company.<sup>52</sup> Prices reflected the size and number of rooms, the presence or absence of furniture and, most importantly, the situation.

Location was everything to the seasonal visitor, and this preoccupation is amply illustrated in the novels

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<sup>51</sup>Fiennes, Journeys, pp. 33; 41; Neale, Bath, p. 40.

<sup>52</sup>Warner, History of Bath, pp. 216; 236; Bath Guide, p. 103; Haddon, Bath, p. 152.

of the time. Bath was a city horizontally, rather than vertically divided: rich and poor areas, though contiguous, were clearly demarcated and the inhabitants of individual houses were socially homogeneous.<sup>53</sup> Matthew Bramble, who brings his family to Bath in the course of Humphry Clinker, rejects his first lodging on the South Parade on account of the noise and the occupants who, he indicates, were not suitable housemates for a country squire and his entourage. He repairs rapidly to lodgings in Milsom Street, which he hires for five guineas per week, not including vails to servants.<sup>54</sup> Milsom Street was still fashionable at the time described by Jane Austen in Northanger Abbey. The lofty Tilneys lodge there, while Catherine Morland and her chaperones stay in 'comfortable lodgings' in Pulteney Street. The Thorpes, in the care of

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<sup>53</sup>Cf. with Paris and Edinburgh. When the Bramble family visits the latter city, they choose a high lodging, 'the fourth story being, in this city, reckoned more genteel than the first': Smollett, Humphry Clinker, p. 251.

<sup>54</sup>Egan, Walks through Bath, p. 112, claimed that the South Parade had a 'most respectable appearance' when he wrote many years later. Smollett apparently disagreed: Humphry Clinker, pp. 57-67. For the depredations of Bath lodging-house servants, and the rivalries between them and the servants of the lodgers, see pp. 101-2. When Win Jenkins, one of the Bramble servants, is persecuted by having her belongings and her lover stolen, and by being called 'skandelus names', she seeks her revenge against the local servants through the magistrates, who she calls in to search for her stolen goods. Squire Bramble forbids prosecution and Jenkins claims she only invoked the strong arm of the law to terrify her tormentors, which she did.

their widowed mother, lodge in Edgar's Buildings.<sup>55</sup> Location is of even greater consequence to the characters of Persuasion. The marriageable Musgrove daughters beg their father for '"a good situation--none of your Queen Squares for us"'. Sir Walter Elliott, who has moved to Bath to maintain his style of living without the mortal expence of running his estate, takes 'a very good house in Camden Place, a lofty, dignified situation, such as becomes a man of consequence'. Colonal Wallis, Mr. Elliott's friend, lives 'in very good style in Marlborough Buildings', while Lady Russell, a country neighbour, lodges in Rivers Street. Admiral and Mrs. Croft, Sir Walter's wealthy tenants, take up residence in Gay Street, which Sir Walter distinguishes as a suitable address to receive his visits. Lady Dalrymple and her family, the Elliots' noble cousins, take a house in Laura Place, Bathwick, 'and would be living in style'.<sup>56</sup> In the satirical verses of

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<sup>55</sup>Austen, Northanger Abbey, pp. 76; 14; 38. Austen is describing the period around the turn of the century. When the Tilneys' lodgings are snatched up the day after their departure, Mrs. Allen says to Catherine: 'But no wonder, Milsom Street, you know': p. 200. Egan, Walks through Bath, describes Edgar Buildings as an 'elevated respectable terrace' (p. 74); Milsom Street as 'the peculiar resort of the beau monde' (p. 75) and 'the very magnet of Bath' (p. 156).

<sup>56</sup>Austen, Persuasion: Musgroves (p. 44); Sir Walter (p. 130); Col. Wallis (p. 132); Lady Russell (p. 218); Crofts (p. 160); Lady Dalrymple (p. 142). Egan, Walks through Bath, describes Queen Square as magnificent and chaste, but it was too old to be fashionable (p. 153). He lauds Gay street and Marlborough Buildings as

A Summer in Bath, a Bramble-like family descends on Regency Bath in the off-season. Confronted with the newly fashionable upper town, they are uncertain of where to stay until an old friend assures them that the old town is perfectly healthy and sends them to the North Parade.<sup>57</sup>

The generous Mr. Pickwick has no such doubts and loses no time in moving from the White Hart Hotel to the upper storeys of a house at that most fashionable address of all, the Royal Crescent, where he installs his friends and continues the adventures described in the Pickwick Papers.<sup>58</sup>

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respectable (pp. 153; 179), and describes Upper Camden Place as a 'delightful place of residence' (p. 177). Jane Austen knew the intricacies of Bath residency patterns at first hand, having lived there. She probably stayed with relatives at the Paragon in 1797 and the ancient Queen Square in 1799. When her father moved his family there in 1801, they considered Westgate Buildings, Charles Street, Laura Place, Pulteney Street, Gay Street and Chapel Row, but ended up at Sydney Place in Bathwick where they intended to live with two maids and a manservant on about £600 per year. Austen and her mother stayed on in Bath for a year and a half after her father's death in 1805 and, adapting their lodgings to their reduced income, moved at one point to Gay Street with a single female servant: Emma Austen-Leigh, Jane Austen and Bath (London: Spottiswoode, Ballantyne and Co. Ltd., 1939), pp. 1-2; 13-16; 25; 30-33. Egan assured his readers that there was a plethora of boarding houses for 'visitors who are anxious to confine their expenditure within certain limits': idem., p. 66.

<sup>57</sup>Wood, Summer in Bath, p. 17. This friend was either malicious or out-of-date, for Egan condemns the North Parade as no longer fashionable: Walks through Bath, p. 112.

<sup>58</sup>Dickens, Pickwick Papers, pp. 583; 594. Egan, Walks through Bath, p. 181, notes that 'No lodgings, it appears, are to be obtained in the CRESCENT; and it is often difficult to procure houses'. Neale, Bath, p. 38,

None of these fictional characters was in danger of straying into the unsavoury districts on either side of the river. Alongside the transient population memorialised in the literature of the eighteenth and nineteenth centuries were a working one that needed to be housed near its place of work and an impoverished one that could pay only one night at a time.<sup>59</sup> The streets around the King's Circus (Morford, Ballance, Lampard's Buildings) contained some of the earliest housing built specifically for the working class in Bath. In Avon Street, the Dolemeads and Holloway a combination of flooding, the presence of small factories and timber yards, free-ranging pigs and brothels provided a setting for the overcrowded tenements visited regularly by epidemic disease. Holloway was a haven for beggars and criminals because it was outside the jurisdiction of the borough.<sup>60</sup> The labouring and the poor paid far less

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notes that these houses rented for £130 for the season in the mid-eighteenth century, at a time when seasonal rentals ranged from £10 to £140.

<sup>59</sup>Little, Building of Bath, p. 132, claims that the working classes were domiciled 'in the attics or mews of the houses they served' until, in the mid-nineteenth century, 'new and not always unseemly terraces [were] built for them'. Neale places the working classes in 'odd courts and alleys throughout the city', as well as in the districts already named, but it is unlikely that any but domestic servants occupied the attics of the better houses: Bath, p. 274.

<sup>60</sup>Little, Building of Bath, p. 132; Haddon, Bath, pp. 154-55; Earle, Bath Ancient and Modern, p. 231. For poor areas, see Warner, Excursions from Bath, p. 4 (Holloway); Neale, Bath, pp. 211-12; 215-18; 247; 259; 271;

than the visitors for their often unsalubrious lodgings. A century after Chandos built Westgate Buildings there were twenty-seven lodging houses in Holloway alone, letting rooms at 3d. a night. In 1815 a widowed washerwoman with two children paid 2s. a week, a third of her wages, for her 'small garret'.<sup>61</sup> In the 1840s, a family could rent a room measuring 10' x 8' for 9d. a week. A subsistence budget for a family of four allowed 1s. 6d. out of a total of 12s. per week for rent in 1831, and this probably included slightly larger quarters or access to a kitchen.<sup>62</sup>

Proximity, large numbers of men and children who were home during the day (note the shoemakers and tailors, working in their rooms, who appear in the causes that follow), competition for space and facilities (kitchens, washing areas) and lack of privacy all made the lodging house a more public and conflict-ridden environment than many had previously experienced, even in the smallest and nosiest village. Yet one can juxtapose the transience,

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274; 289 (districts) and pp. 400-405; 428-29 (tables of rateable values and rentals). In 1821, 1519 people lived in 90 houses in Avon Street: Neale, 'Bath 1800-1850', p. 16.

<sup>61</sup>Brian Weight, 'Public Health and Housing in Bath' in Bath in the Age of Reform, p. 51. See also Warner, Excursions from Bath, p. 7, for the gradations in Holloway lodgings. The widow's case is reported in Report of the Bath Society, page following p. 20: the parish gave her 2s. a week to supplement her wages.

<sup>62</sup>Weight, 'Public Health and Housing in Bath', p. 51; Neale, Bath, pp. 284; 282.



the frequent moving at quarter day, with the surprising number of family members who lived near enough to visit or to fight. Mobility within the city was high, but Bath natives do appear in court, and it was as common to claim a friendship of many years as to deny all knowledge of a neighbour. Like people in the villages, the residents of Bath knew both a tremendous amount and very little about their neighbours; and when they were called into court they might find it expedient to emphasise one or the other. Equally striking is the solidarity of some neighbours who, like the Catholics in *Wickham v. Lockyer*, were united by religious beliefs or by a common place of origin. The reconstitution of provincial communities, or the construction of new ones on the basis of such factors as religion, by banishing anonymity, offered protection to newcomers but also provided a context in which enough was known about individuals to make the defence of reputation a serious matter.

The conflicts that arose in the close quarters of the lodging house did on occasion explode into the sort of verbal or physical abuse that required legal intervention. The choice between the magistrate and the church court is never clearly defined: it looks as if in Bath litigants used both venues whenever possible. In the six sets of causes which follow, the civil authorities intervened in at least two of them, and one landlord threatened to take his

feuding tenants before the magistrates. Finally, the relationship between landlord and tenant, which may have been obscured in some of the rural causes discussed above (see *Hollister v. Gould*), plays a prominent part in the disputes leading to defamation suits. In Bath, where many lodging-housekeepers were women, (and in the church courts, where causes could only be brought by landladies, rather than landlords), landladies appear as plaintiffs, defendants and mediators. None of the women who appear in the causes below resemble the landladies of eighteenth-century fiction: neither the procuress depicted in *Amelia*, nor the array of landladies, at least one in Bath, encountered by Moll Flanders in the course of her travels. Closer to the mark is the landlady of the ill and impoverished Mrs. Smith in *Persuasion*. Mrs. Smith, a widow entirely at the mercy of this woman, observes that 'her illness had proved to her that her landlady had a character to preserve, and would not use her ill'.<sup>63</sup> It was these women with characters to preserve who found the church church courts ideally suited to their needs and who included them in their professional arsenals as a matter of course or who learned of them when they consulted solicitors.

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<sup>63</sup>Fielding, *Amelia*; Daniel Defoe, *The Fortunes and Misfortunes of the Famous Moll Flanders* (Harmondsworth: Penguin Books, 1978); Austen, *Persuasion*, p. 147.

Ann Coles and her husband John gave notice to their landlady, Rebecca Gibbons, in early July 1811, less than a year and a half after they had first let their rooms in Chelsea Buildings.<sup>64</sup> They moved out on 20 September 1811, and tried to return the key to Mrs. Gibbons eight days later, 'which she refused to receive'. According to the landlady, Coles 'went away muttering "That she...should hear from him in a different way"', and sure enough she received a citation from the ecclesiastical court on 2 October. Though Mrs. Gibbons admitted that she had quarrelled with Mrs. Coles at the latter end of June over 'some person washing in the Defendants[?] apartment', she contended that they had lived 'very peaceable together and never had a misword' prior to that, and that the suit was provoked by her refusal to accept the key.

Whatever the cause of the suit, and at least one of the neighbours recalled hearing 'many little wranglings and disputes' between Mrs. Gibbons and Mrs. Coles, the issue was Mrs. Gibbons's contention that John Coles was not the father of Ann Coles's baby. Elizabeth Pearce, a neighbour at Chelsea Buildings who had known Mrs. Coles for ten years and who moved away before the Coleses did,

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<sup>64</sup>Coles v. Gibbons, D/D/Ca 479 (1811) and D/D/C (1811). Chelsea Buildings were part of the late eighteenth-century expansion in low-price housing that included Half-Moon Street, Dover Street and Snow Hill: Neale, Bath, p. 247.

recalled Mrs. Gibbons coming to her apartment one afternoon and asking her who she thought the infant Coles resembled. Mrs. Pearce, who evidently knew her neighbour well enough to give her such an answer, said, 'like its father Mr. Coles but more like its grandfather'. Mrs. Gibbons replied that it was 'young Jem Grist's Child of Laycock the Bathchelor [or butcher?]', an accusation she was to repeat many times during Mrs. Pearce's tenure of six weeks and three days in the building. Mrs. Pearce's married sister, Mary Bryant, 'was in the habit of visiting her sister', occasionally with her mother, Mrs. Adams, and she, too, recalled Mrs. Gibbons's gossip.

[She] well remembers being there...when her Sister's washing or ironing was about when the Defendant asked [her] if she cou'd say who the Plaintiff's Baby was like and on her telling the Defendant she cou'd not say as she did not know the Baby's father or that she ever saw him the Defendant immediately said It is no more his Child than it is mine or my husband's it is young Jem Grist's Child of Laycock.

Mrs. Bryant, who had lived in Walcot for over two years but only knew Ann Coles through visiting her sister, did not feel able to comment on her character.

Harriott Hooper, who rented out rooms and shops at No. 10, Bath Street--a street of excellent shops according to Egan--was summoned by a tenant to break up a dispute with another tenant one evening in October 1822.<sup>65</sup>

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<sup>65</sup>Collett v. Tarring, D/D/Ca 451 (1822) and D/D/C (1822); Egan, Walks through Bath, p. 98. It was in Bath Street that Jane Austen's aunt, Mrs. Leigh-Perrot, was

Mrs. Hooper had not been long established at that address, having lived in the parish 'a twelvemonth last Michaelmas' at the time of her deposition in January 1823. In addition to letting lodgings, the fifty-one-year-old Mrs. Hooper helped her husband in his pawnshop. She was 'sitting in her Shop at work' around eight o'clock in the evening and was handing out supplies to her washerwoman, Sarah Gibbons, when James Collett came and told her that 'Mr. Tarring was much abusing him [and] begged her to step into his Shop and hear what Tarring said'. Mrs. Hooper followed her tenant into his shop, which adjoined her parlour, and found Mr. Tarring, the other tenant, calling Mrs. Collett a 'damnation whore'. 'She's as big a Whore as any in Avon Street', he continued, 'she's as great a Prostitute as any

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falsely accused of walking off with lace from a milliner's shop in 1799. Her imprisonment and trial are described in a series of letters in N&Q for S&D, 18 (1926): 1-8; 58-61; 79-81; 99-105; 135-38; and in Austen-Leigh, Jane Austen and Bath, pp. 7-11. The scam was a not unfamiliar one, a means of extorting money from wealthy visitors willing to pay to protect their good names. The accusation of theft, particularly if backed up with a willingness to prosecute, undoubtedly carried more weight with the upper classes than the accusation of whoredom, when brought by a social inferior. Jane Leigh-Perrot referred to the accusation in a letter:

'Can anyone believe that all this could have been said to me in one of the most public streets in Bath--at two o'clock when everybody was passing to the Cross Bath to drink the Water and that no person should have heard it which [the prosecutrix] says was the Case? Can anyone believe that if she had dared to have said this to me My Husband...would not have taken some legal steps against such defamation of a Wife's Character'? (N&Q for S&D 18 (1926): 136-37).

in Bath'.<sup>66</sup> Sarah Gibbons, who knew Tarring from his lengthy residence in the adjoining house, heard him say 'you are a damnation Whore worse than any common prostitute down in Avon Street'. Mrs. Hooper was not certain of the injury done to Mrs. Collett, but considered 'the same disgraceful to be spoken to any virtuous woman'. She had only rented to Tarring and the Colletts for seven or eight months at the time of her deposition, yet felt qualified to give Mrs. Collett a good character: she conducted herself 'with propriety and as becoming a married woman'.

The first of these two causes illustrates the role gossip and the litigation it could engender play in regulating behaviour. A landlady such as Mrs. Gibbons

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<sup>66</sup>Mrs. Hooper explains that Avon Street 'is a street in Bath of ill-fame'. Egan, Walks through Bath, pp. 192-93, calls Avon Street 'the receptacle for unfortunate women', but goes on, in his enthusiastic way, to defend it: 'although it may be termed the Wapping of Bath, it is but common justice to observe, that it is far removed from the disgusting scenes which are so publicly witnessed at this memorable place at the east end of the Metropolis. With all the vigilance of the police of this elegant City, and its active Corporation towards removing public nuisances, BATH, in the height of its season, has its share of the frail sisterhood; but their language, manners, and demeanour are not of that very obtrusive nature which characterizes these unhappy females in London, Liverpool, and Dublin. Houses of ill-fame (or if a more genteel phrase is acceptable, in the term BAGNIOS, for such houses) are to be discovered in BATH. Upon the search-nights, which generally commence with such activity upon the accession of a new Mayor into office, some females of rather a higher cast, with their amorous gallants, have been obliged to acknowledge or show a sort of passport, to account for their awkward situations before they could obtain a discharge the next morning'. (At this point Egan breaks into verse).

could attempt to provoke an offending tenant by spreading the rumour that she had duped her husband and borne another man's child (in this case a man specifically named who must have been known to the witnesses, perhaps as a frequent visitor to Mrs. Coles). Whether or not it was her intention to drive Mrs. and Mrs. Coles out, Mrs. Gibbons discovered that words that had been tolerated in July, no matter how often and how publicly repeated, provided the basis for litigation in September when a quarrel arose over the disposition of the key. Mrs. Gibbons may have misjudged her auditors, for Elizabeth Pearce was an old friend of the plaintiff, and both Pearce and her sister proved willing to repeat the malicious gossip in court. Gossip was a double-edged weapon, and under circumstances such as these could be used effectively to exact legal retribution for what may have been unrelated crimes. The second cause, which reveals nothing of the nature of the antagonism between the Colletts and the Tarrings (one would like to know whether Tarring directly abused Collett, or whether he was referring to the insults aimed at his wife) illuminates instead the mediating role played by landladies who were responsible for keeping peace within their houses.

More of a family matter, in which no landlady participates, the following cause sheds some light on the anatomy of the small communities of friendship and neighbourliness that existed within the city. The events

that led Mary Stacey, the widowed sister of Mary Lacey's 'mother-in-law' to say to Mrs. Lacey, "'you Whitelivered Whore, where is your hen-pecked Husband...I have seen you in Bed with Robert Andrews, I'll take my Oath to it any day - so help me God"' were deliberately obscured by both principals.<sup>67</sup> Prudentia Perry, a singlewoman who was a fellow-tenant of Mrs. Lacey's at No. 5, Claverton Buildings, deposed that both Lacey and Stacey had told her to 'say nothing more than to answer the questions put to her on her examination'. Perry had been sought out by Lacey and her sister, Mrs. Davies of Cheap Street, Bath, after a friendlier witness confessed to being absent from the house on 'old Christmas Eve', the time of the incident.<sup>68</sup> She had lived in the parish less than two years and claimed to have had 'but little acquaintance' with Lacey. Maria Lacey, despite her hostile encounter with her relative, could call upon a good many sympathetic friends and kinspeople for assistance in her prosecution. James Coleman, the unsuccessful witness, had lived in the parish more than fourteen years and had known Lacey for many years. Sarah Robson, another witness, had lived in Lyncombe and Widcome for fifteen months, but had known

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<sup>67</sup>Lacey v. Stacey, D/D/Ca 452 (1829) and D/D/C (1829).

<sup>68</sup>To Egan, Walks through Bath, p. 166, Cheap Street was yet another street of good houses and respectable shops, which tended to mean something well below the fashionable districts but still above the working class warrens.



Lacey for more than twelve years. Like Prudentia Perry, she was a native of London. Robert Robson, her husband, was a herald painter, Coleman was a builder and Rheuben, Maria Lacey's husband, was a carpenter; they may have shared work as well as lodgings. Maria Lacey lived across the street from the unfriendly Mary Stacey; her mother-in-law, who presumably sided with Stacey, lived near enough to have accompanied Mrs. Stacey on her defamatory errand; and at least one sister lived across the river in Cheap Street. While the ties of friendship appear stronger than those of kinship in this cause, the proximity of so many members of Maria Lacey's family demonstrates that ties of blood and marriage were influential in drawing immigrants to the city.

The next two causes, both from 1835, are well-documented and include lengthy depositions which alert us not only to situations likely to give rise to conflict, but also to the ways in which individuals were vulnerable to insult. The first suit began as a dispute over where to hang the washing, and the second may have originated in similar competition over scarce resources. Eliza Jane Nowell, the plaintiff in the first cause, took no part in the incident, but the fact that she was the second wife of a man old enough to have a seventeen-year old daughter was enough to attract the malicious notice of a neighbour once hostilities were underway. Caroline Taylor and Fanny

Millard were married women and their defamatory remarks extended to their children and their husbands. Taylor was employed at some sort of wage work, and it is this that may have inspired her adversary, who kept a shop, to charge her with prostitution.<sup>69</sup>

John Parker, a tailor, was working at home in Miller's Court, in St. Michael's parish, on 21 August 1835.<sup>70</sup> At first he noted a dispute between Mrs. Workman and Mrs. Gowen, the wife of Francis, also of Miller's Court,

respecting the hanging out of Clothes to dry in Miller's Court...and Mrs. Workman requested Mr. Nowell...to cut away the Prop on which the Line was suspended, it being on his premises, and to end their dispute; [which he did] which caused Mrs. Gowen displeasure; and sometime after Dinner, about [2.00 p.m.]...Mr. Gowen...brought into the...Court some Sticks or Props and a Pick Axe and Shovel, and was beginning to dig up the Ground of...Mr. Nowell, who told him he was doing wrong and desired him to leave off digging, but...Mr. Gowen...would not desist and began to abuse...Mr. Nowell and said to him 'Come pretty Joey, I won't keep a knocking Shop'...Mr. Nowell asked, who did...Mr. Gowen answered "You do, and your Wife's a Whore" and began to push his Fist towards...Mr. Nowell's Face, and then...Mr. Nowell went for a Constable, and on his return with a Constable...Mr. Gowen continued to call...Mr. Nowell "Pretty Joey" and saying to him "I don't keep a Whore but your Wife's a Whore and we can prove it'.

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<sup>69</sup>It is possible that Taylor was one of Bath's many washerwomen (there were 1436 in 1851) which would have enabled her, like Sarah Gibbons in Collett v. Tarring, above, to go out to work at night: Neale, 'Bath 1800-1850', p. 14. The fact that she worked in their homes and handled their clothing may have caused her employers to insist that she clear her name.

<sup>70</sup>Nowell v. Gowen, D/D/Ca 441, 454, 455 (1835) and D/D/C (1835).

Parker had not been long resident at Miller's Court, and aside from those he identified he observed that 'many persons whose Names he cannot state' were present.<sup>71</sup> He was ready to defend Mrs. Nowell, who 'bears an excellent character in Bath'.<sup>72</sup> '[I]t has been a subject of Conversation in Bath what...Mrs. Gowen has said of...Mrs. Nowell', he added, 'and he supposes it must be an injury to her'.

From the window of her father's house at No. 41, Walcot Street in Miller's Court, where Parker had seen her 'looking out' with another woman. Eleanor Nowell heard Mr. Gowen say "Joe Nowell's wife...is a Whore" and then watched as he cried out "Oh! Joey, pretty Joey" and began jumping about'.<sup>73</sup> Eleanor described her 'mother-in-law'

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<sup>71</sup>At his examination in late January 1836, Parker gave his residence as St. Peter and Paul, 'where he has resided rather more than two months last past'. Born at Bathwick, he had lived at Miller's Court for four or five months prior to that. Some of the bystanders who were to be called as witnesses included a widow and the wife of a gardener, both known to Eleanor Nowell and probably a mother and daughter.

<sup>72</sup>Mrs. Nowell's stepdaughter was born in St. James and had lived for more than ten years in St. Michael, but how many of them with Mrs. Nowell cannot be determined. Both women could sign their names; Joseph Nowell could not.

<sup>73</sup>Walcot Street was 'entirely devoted to shops and trade', including a pin-manufactory staffed by parish children, a livestock market and a corn market: Egan, Walks through Bath, p. 173. Courts extended off it in either direction and given the name, Miller's Court was probably on the river side adjoining the corn market. Neale, Bath, pp. 218; 271; 295, identifies St. Michael as a tradesmen's quarter, though Walcot Street and the stagnant courts off it were a poor area.

as a virtuous woman and was uncertain of the injury, 'but suppose it must be a disgrace to her to be thus spoken of.' Without being able to see Eleanor's face, or to hear her tone of voice; without knowing the age or tenure of her stepmother, it is impossible to gauge the irony or the discontent in that reply.

Sentence was read against Gowen, who had since moved to St. Michael's Court, on 23 February 1836, and he was ordered to perform penance in the vestry of St. Michael's church. On 15 March 1836 the penance remained unperformed, and the plaintiff's proctor petitioned to signify Gowen's contumacy to Chancery. Eight months later, on 22 November, 'Defendant was brought into Court from the Gaol of Ilchester under an Habeas and he having performed a penance and purged his contempt he was absolved and the Judge taxed the costs of such contempt and admonished Defendant to pay same'. The costs of the suit were taxed, on 14 February 1837, in Gowen's absence, at £15 2s. 5d., a sum that he failed to pay within fifteen days as directed, despite his previous experience. On 18 April 1837 his contumacy was again signified to Chancery.

Nowell, it appears, was willing to continue this cause for two years and to send his adversary to prison twice. Nowell's daughter was reimbursed 5s. for her court appearance, the same amount as Parker, a tailor, for the loss of one day's time and work. This may indicate that

Eleanor Nowell worked (but it is a high rate of reimbursement for a working woman) or that her father was that much better-off than his neighbours that his daughter's time was worth this much. Francis Gowen, perhaps for lack of money or for lack of respect for or even ignorance of the court's sanctions, let the court's orders go unheeded, no doubt to his subsequent regret.

The quarrel between Caroline Miller and Fanny Millard erupted a week earlier than that between Nowell and Gowen, on 15 August 1835.<sup>74</sup> The 'Saturday after Lansdown Fair', according to the fourteen-year-old Mary Hodges,<sup>75</sup>

she was living, as Servant, with Mr. and Mrs. Taylor... at No. 11 in Philip Street...and Mr. and Mrs. Millard ...lived in the same House, and between Three and Four o'clock of the afternoon...she...and...Mrs. Millard were going at the same time to the Cistern in the lower part of the House for Water, and she...heard Mrs. Millard tell her Child to come away and not play with Mrs. Taylor's children for they had not a Shirt to their Backs, and...Mrs. Taylor hearing...asked...Mrs. Millard what she meant and added, they have as much clothes as your Child and are kept as clean...Mrs. Millard used an indecent expression and putting her Hand behind her said to Mrs. Taylor "I wasn't a Whore before I was married nor yet now - you...was a Whore before you were married and thou art one now - and you do keep your poxed-arse Man in your Whoredom"...Mrs.

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<sup>74</sup>Taylor v. Millard, D/D/Ca 441 (1835) and D/D/C (1835).

<sup>75</sup>Lansdowne Fair was held on 10 August near the Blathwayte Arms (the pub kept by Jane Pow in Pow v. Osborn, Chap. 6, above): Egan, Walks through Bath, p. 238. Mainwaring, however, in Annals of Bath, pp. 78-9, claims that the fair was held annually on a Sunday and generally 'ended in drunkenness and rioting'. The authorities attempted, unsuccessfully, to shut it down in 1808. Whether the fair or its dissipation had any connection with the dispute we do not know.

Taylor then asked...whose Whore she was, and...Mrs. Millard replied..."Young Strange's and more than that I have met Wine Merchants coming up Stairs at two o'clock in the morning, muffled up to the Chin, with wine - thou dos't turn up for twopence a time...I can prove thee to be a whore and will prove it"...and many other indecent expressions.

William Warden, the twenty-six-year-old son of the landlord, was at his work as a cordwainer when the quarrel disturbed him.

[S]ometime in last Summer...whilst he was at work in a back Parlour of the House...he heard a Quarrel, and he left off working and listened a bit, and then heard Mrs. Millard...tell Mrs. Taylor that her Husband had been guilty of Thievery and had taken [15s] from the Shop Counter, and...Mrs. Taylor replied..."Go along with thee, you rafty Whore", upon which...Mrs. Millard said 'If I'm a rafty Whore, thee be'st a rotten Whore' and he...then resumed his Work, and began hammering a Pair of shoes, purposely that he may not hear any thing more for some little time, perhaps five to ten minutes elapsed - and then Francis Warden, the Father of him (Deponent) the Renter of the House left the back Parlour and went into the Passage, and he followed, and he...then heard his Father tell Mrs. Taylor that he would not have such a Piece of Work made in the House, and that they, meaning her, her Husband and Family, should leave the House, and he should warn them out and...Mrs. Taylor told him that...Mrs. Millard began first, which Mrs. Millard denied and said that...Mrs. Taylor first began, and each accused the other several times, of being the first beginner.

Warden's evident distaste for the scene, and his tendency to heap blame on the plaintiff, made it necessary to call a third witness.<sup>76</sup> Mary Broadhead, though she still accused both women of uttering defamatory

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<sup>76</sup>Warden not only refused to appear, but had his contumacy signified to Chancery after Taylor's proctor claimed that he had already been paid 15s. in expences. He may have ended up in gaol for a brief period, for he was absolved after his examination on 15 March 1836; if so, he was unlikely to be a favourable witness.

expressions, made some effort to show that the provocation lay with Mrs. Millard. Five years younger than Warden and married to a carpenter, Broadhead kept well abreast of building gossip and was uniquely able to set the scene in her deposition. Far from ignoring the quarrel, she played an active role, cossetting babies, chastising servants and intervening in the battle.

[S]ome day in last summer...she was at home at her residence...and...saw Mrs. Taylor...and Mrs. Millard...together in the Passage leading from the Hall to the Kitchen, and an Infant, the child of Mrs. Millard was standing near them and Mrs. Taylor and Mrs. Millard were quarreling...and she... took up the Child, calling her a dirty little puss, her Face being blackened all over; upon which Mrs. Millard said if she is dirty outside she is clean underneath, she has got a shirt and petticoat on...Mrs. Taylor [said] to Mrs. Millard, if her children were dirty, her Husband did not bring home a Whore; upon which...Mrs. Millard asked..."Does mine?" and Mrs. Taylor answered "Yes, and when thee was out of Town thy Husband brought home a Whore and made a bawdy house of the Room and gave her sixpence" upon which...Mrs. Millard made a laugh at it, and said, he gave her half a Crown...Mrs. Taylor said, if her Husband wanted a Whore he should give her sixpence and take her out instead of bringing her home making a bawd house of the house...Mrs. Millard then told...Mrs. Taylor that her Husband did not look wholesome enough for a Whore, and Deponent then took the Child, who was crying very violently, up Stairs, where she left her and then came down and told...Mrs. Millard she was wanted, with a view to put an end to the quarrel..both of them were violently talking at each other...Mrs. Taylor [called] Mrs. Millard a Rafty Whore, and Mrs. Millard replied..."If I am a rafty Whore, thee be'st a rotten Whore" and one called the other a rafty Whore and a rotten Whore five or six times in a Minute; but she...cannot state what passed whilst she was going up and down stairs, but both were talking very loudly...when she...went up Stairs with the Child she observed several persons were looking out of the Windows of the adjoining House, as if attracted by the Noise, and she looked out of the Window and saw William Warden looking out of the Window of the Room

beneath that, in which she was...William Warden lives with his Father in the same House in which Deponent then resided...Sarah Chapple a young Girl who worked for Mrs. Warden came into the House at the time she...went down Stairs, and told Mrs. Millard that she was wanted...and...Sarah Chapple went on to the front Parlour in which she worked, without stoping, and...when she went up Stairs with the Child, she saw Mary Hodges a Servant of Mrs. Taylor looking over the Banisters of the uppermost Stairs at the top of the House, and when she saw Deponent she drew her head back - and she...by way of rebuke to her in listening to such language, said "Ah Polly, you had better go down and make one of the Party"...many other indecent expressions were used by [them] the one towards the other, and at last Mr. Warden came out and told...Mrs. Taylor that if she did not go to her own Apartment, he would take his staff and take her to the Hall, [the Guildhall, i.e., before the magistrates] and that if Flin did not keep his apartment to himself, instead of allowing her Mrs. Taylor to use it, he should give him Notice to quit.

It is possible that the verbal brawl between the women would have gone unnoticed outside of Philip Street, or at best would have landed some of the parties at 'the Hall' to be bound over to keep the peace, if Mrs. Taylor's employers had not pressured her to clear her name.<sup>77</sup> This we know from Grace Hodges, who so thoroughly acquitted her mistress in her deposition.<sup>78</sup> Hodges described Mrs. Taylor as 'an industrious hardworking Woman', virtuous 'in every way'. She had been injured, 'but the People for whom she

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<sup>77</sup>Philip Street, built in 1808, was a short walk from the Guildhall: Peach, Street Lore of Bath, p. 106.

<sup>78</sup>Hodges was born in St. Peter and Paul and gave her residence as Philip Street 'where she has lived for the last seven years and upwards'. There is no indication that she left the Taylors' service prior to examination, and her knowledge of the consequences of the incident suggests that she remained in Mrs. Taylor's confidence.



...worked inquired into it and found there was no truth in what...Mrs. Millard said of her, and...Mrs. Taylor has now got back her work again'. The other witnesses were less enthusiastic about Mrs. Taylor. Warden admitted that she was of a virtuous life 'so far as he knows, but he does not consider her name and reputation had been in any way injured and disgraced'. Mary Broadhead, who had lived in the house 'for the last twelve months and upwards', minimised her knowledge of the plaintiff. 'Saving and except the conduct of Mrs. Taylor on the day mentioned', stated Mrs. Broadhead, drawing a clear distinction, 'Deponent knows not but that Mrs. Taylor is a Person of a sober and virtuous Life and Conversation'. The judge was equally unconvinced of Mrs. Taylor's blamelessness, and dismissed the cause by interlocutory decree on 19 July 1836, ordering each party to pay her own costs.

The coldness of the witnesses and Warden's lack of cooperation may be tentatively accounted for by examining some of the factors, such as coresidence, geographical origin and occupation, that united tenants in other lodging houses. While the Taylors may have lived in Philip Street as long as seven years (the time Mary Hodges had lived there), and while Mrs. Taylor's voice, servant and children were readily recognised, Warden had only been resident for a year and a half and Broadhead for a shorter period. There was no apparent geographical or religious bond

between the tenants (Warden was born in Wiltshire and Broadhead in Chester), and Warden, Mr. Millard and Broadhead's husband followed different occupations. Neither length of residence nor shared occupations or origins strictly determined depth of neighbourly feeling: other neighbours, as we have seen, were happy to claim acquaintance and dispense glowing characters without regard to these bonds. Nothing, however, suggests that Mrs. Taylor was unaccepted: no one, except Mrs. Millard, appears to have been uneasy in her presence, and she and her husband had at least once acknowledged ally in Morris Flinn, who lent out his room to them during the day and whose signature appears alongside theirs on the proxy. What may have been in operation was a perception of a difference in status between Mrs. Taylor and Mrs. Millard. Though both couples could sign their names and rented rooms in the same house (the Millards moved away to No. 3, Somerset Street 'some weeks' after the incident), Mrs. Millard kept a shop while Mrs. Taylor worked for wages. Married women who worked for wages were generally supplementing the income of an unskilled labourer, and though the combined earnings of each couple may have been similar (we do not know what sort of shop Mr. Millard kept, and whether he had another occupation) their unequal status may have been readily acknowledged by neighbours. That the Millards had greater financial resources is suggested by

the references to Mrs. Taylor's poverty--and at 2d. a throw she was even a cheap whore--and by the fact that their proxy was signed by Mr. Dore, a Bath solicitor, and his clerk.<sup>79</sup>

This hint of social friction, which is more manifest in the next cause, is not the only current new to defamation proceedings to be found in this suit. Among them, the behaviour of the landlord and the divergent reactions of witnesses to the form and content of the verbal abuse are the most obvious. Unlike landladies such as Mrs. Hooper, who seem to have been familiar with the use of Wells Court, Mr. Warden threatened his tenants with the magistrates and with eviction. Neither Warden nor his son displayed any sensitivity to the particular charges of thievery and whoredom; and though it was the charge of male thievery that originally piqued his interest, the younger Warden claimed to object to the noise rather than the words. The female witnesses, on the other hand, were eager, when examined, to show that they could distinguish between the respectable and the indecent. Mary Hodges refers to 'indecent expressions' instead of recounting the exact words and Mrs. Broadhead points out that she

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<sup>79</sup>Sixpence was a typical price in the eighteenth century. It is quoted, for London, by Roy Porter in English Society in the Eighteenth Century (Harmondsworth: Penguin Books, 1982), p. 283; the sum recurs in *Phillipps v. Anney*, D/D/Ca 397 (1784); and James Woodforde paid his two prostitutes 1s. for a conversation: Diary, 1: 258.

chastised Hodges for listening to 'such language' and removed Mrs. Millard's child from the scene. Closer scrutiny reveals that it is the language that is exceptionable (perhaps, in the case of Hodges and Broadhead, in deference to the examiners), and not the substance of the insults. When Mrs. Taylor suggests that Mr. Millard is bringing whores home, Mrs. Millard converts this into a backhanded compliment to her husband's robustness: Mr. Taylor does not look wholesome enough for a whore'. Men had ceased to take offence at allegations of illicit sexual activity as long as their projected role was active: in this instance it appears that a wife's reputation was not compromised when her husband was accused of adultery. Mrs. Taylor's gibe, which would have stained the reputations of both husband and wife one hundred years before, is deflected with a jest; Taylor herself can adopt this tone when she suggests that her husband would take his whores elsewhere. On the other hand, charges that implicated the husband in cuckoldry were still a matter of injury. Mrs. Taylor's whoredom contaminated her children and her home. Poverty, disease, thievery, whoredom: all these were the coin of insult in the eighteenth century as in the nineteenth, but participants and onlookers had come to object to these accusations for very different reasons in 1835.

The wealth of Charles Lockyer, a coal merchant, may

have had something to do with the prolongation of the two causes he became entangled in between 1836 and 1839.<sup>80</sup> No expence was saved on interrogatories or allegations, no treaties were made between the parties to avoid the cost of a sentence and thirteen depositions were taken. The church court appears as a second line of defence, resorted to after Lockyer's adversary failed to gain satisfaction before the magistrates. There was, too, a religious dimension to the feud. In a city of less than 2,000 Catholics, most of them under the age of thirteen, at least four of them were living at No. 17, Old Orchard Street, the scene of the dispute, and three of them came to their landlady's defence.<sup>81</sup>

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<sup>80</sup>Ferris v. Wickham and Wickham v. Lockyer, D/D/Ca 454, 455, 442 (1836) and D/D/C (1836).

<sup>81</sup>Somerset's tiny Catholic population had congregated in Bath since Jacobite times. (For Catholic missions outside Bath, see George Oliver, Collections Illustrating the history of the Catholic religion in the counties of Cornwall, Devon, Dorset, Somerset, Wiltshire, and Gloucester (London: C. Dolman, 1857), pp. 60-7. These were mainly in the larger towns and dated from the late eighteenth or mid-nineteenth centuries. Frome had a row of houses known as 'Limerick' and Merriott was nicknamed 'Little Ireland' on the basis of seventeenth-century settlements: N&Q for S&D 21 (1935): 235; 212). The Irish immigration of the second half of the eighteenth century and the French Revolution raised the number of Catholics in Bath from approximately 200 in 1767 to over 500 in 1813. By 1830 there were 1348 Catholics, including 220 converts; ten years later, there were 1800 of whom only 570 were over the age of 13. The Religious Census of 1851 lists three places of worship and more than 600 Catholics in attendance for morning service, the most popular service of the day. Though the increase in Catholics did not keep pace with the city's population growth, even in

Lockyer, returning home to sleep between midnight and one in the morning of 21 August 1836, was denied admittance by Sarah and Abraham Wickham, who kept the lodging house in Old Orchard Street where Lockyer claimed he resided.<sup>82</sup> They also pushed Maria Ferris, who Lockyer described as his housekeeper, outside after initially admitting her. The melee that followed was joined by tenants roused from bed who supported the Wickhams and by Lockyer's friends, and was eventually broken up by Joseph

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pre-Emancipation times Catholics were very visible; Bath suffered an outbreak of the Gordon Riots in 1780: Williams, Post-Reformation Catholicism in Bath, 1: 47; 76; 77; 79; 80; 67-8. Neale, Bath, p. 310, offers a materialist interpretation of the riots, but clearly the Catholics described in this cause were not the propertied ones Neale found so prevalent in 1780.

It is impossible to establish, with any certainty, how many of the participants in the suit were Catholic. John Short, James Horlor, Mary Flinn and Mary Fairbairn were referred to as Catholics in the cause papers, and each of the surnames, except Fairbairn, appears in the Catholic registers covering the years 1780 to 1825: Post-Reformation Catholicism in Bath, vol. 2. Several Wickhams, though none named Sarah or Abraham, and several Flowers, though none named Freelove, also appear. The names Mary Flinn, Mary Short and John Short appear repeatedly.

<sup>82</sup>There was a tradition of Catholic lodging-housekeeping dating from the seventeenth century. After the centre of Catholic activity moved from the Bell-Tree House, lodgings for Catholics multiplied in St. James parish. When a new chapel opened in Corn Street in 1786, houses opened in St. James Parade, and when the chapel moved to Old Orchard Street the new premises included apartments to let. Around the corner in Pierrepont Place the chapel let lodgings under the supervision of Mrs. Hippisley in the period after 1817. The Wickhams must have lived in the centre of the Catholic community, or at least the poorer part of it (in the period after 1830 a chapel was serving Catholics in the upper town): Williams, Post-Reformation Catholicism in Bath, 1: 41; 52; 70; 72; 80; 84; 87-9.

Reeves, a policeman. The following Monday, Abraham Wickham took out a summons from the magistrates' court charging Lockyer, William Hutton and John Gilbert with assault. When Wickham lost the assault cases, his wife went to Wells Court and charged Charles Lockyer with calling her a whore the morning after the brawl. Three days later, on 21 October 1836, Maria Ferris cited Sarah Wickham on a similar charge arising out of the brawl itself.<sup>83</sup>

In the latter cause, which we will examine first, the two sides vied to establish a convincing version of the events of the night of 20 August and to describe the relations between Lockyer, Ferris and the inhabitants of No. 17, Old Orchard Street. In Sarah Wickham's suit against Lockyer, the events are of secondary importance; the proctors attempt instead to discredit the reputations of the principals and the witnesses. Both causes generated large numbers of allegations (many of them rejected) and pages of interrogatories. It was through these instruments that the opposing sides presented their accounts of the incidents and undermined those of their adversaries by attacking the reputations of the men and women called to verify them. The favoured methods of bringing these witnesses into disrepute were to suggest

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<sup>83</sup>In this and other causes, the seeming delay between defamation and citation was probably caused by a court vacation rather than the prosecutor.

that they were guilty of sexual misbehaviour or to show that their religious beliefs disqualified them from giving evidence.

The witnesses Ferris chose from among the crowd present at the incident were William Hutton, a tailor of 35, and Amelia Chew, a twenty-seven-year-old spinster who was at Mrs. Wickham's house at the time. Neither Hutton nor Chew knew Maria Ferris and though Chew had 'seen but little of her since', she was well-informed as to some aspects of her life. The interrogatories they were ordered to answer were intended to show that Marie Ferris had cohabited and continued to cohabit with Charles Lockyer 'as Man and Wife'. (The allegation that Ferris had borne an illegitimate child was dropped.) Hutton easily evaded this question by pointing out that he had never met Mrs. Ferris before the event, and that Lockyer had told him on that night 'that she was his Housekeeper, but [he] has no knowledge and cannot form any belief whether she has cohabited with [him] or if she and [Lockyer] now reside or have resided and cohabited together as Man and Wife'. Nor had he 'seen or known any thing of her since August last, except that he saw her on Saturday last'. Amelia Chew was equally evasive, saying 'she has heard...Mrs. Ferris say she was...Charles Lockyer's Housekeeper', and that at the commencement of the suit Ferris had resided 'in a House she rented, and still rents, situate in Pierrepont Street...St.



James'--this despite Ferris listing her address on the citation, and the Wickhams listing Lockyer's, as New King Street in Walcot.<sup>84</sup> Both Hutton and Chew were able to date the incident by the hearing before the magistrates, where Hutton was charged with assault and Chew was 'required to attend as a Witness' on behalf of Lockyer, Ferris, Hutton and a Mr. Gilbert.<sup>85</sup>

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<sup>84</sup>Ferris's proctor had tried to establish the permanency of Lockyer's residence by asking witnesses whether 'when Wickham and his wife were about to give up the House they stated to one John Jones that Lockyer was the principal Tenant in the House?' Mrs. Wickham's proctor alleged, at one point, 'That at the commencement of this suit...there was no such person as Maria Ferris of New King Street...Walcot in the City of Bath Spinster of which place the pretended plaintiff...is described in the citation'... All of the addresses attributed to Ferris and Lockyer, aside from Old Orchard Street, suggest a tradesman's status. New King Street was built for the lower middle classes; the Austen family found the houses too small for them: Little, Building of Bath, p. 96; Austen-Leigh, Jane Austen and Bath, p. 22. Egan described the street as a 'respectable and retired situation, and where good lodgings are to be procured'; and Pierrepont Street as 'respectable': Walks through Bath, pp. 196; 112. Their witnesses inhabited less savoury regions. William Hutton had lived in Abbey Street for at least five years, and in St. James's for at least ten. Amelia Chew had returned to Lyncombe and Widcombe, the parish of her birth, 'about a fortnight' prior to her examination in January, 'having lived in Galloway Buildings...for a twelvemonth previously'. In October 1837, she had been living at Holloway for about six months, as had an address as any in Bath. Freelove Flower had lived at Galloway Buildings 'all her Lifetime'; it housed a concentration of the city's poor: Neale, Bath, p. 274. Joseph Reeves, his most recent address Princes Buildings, had resided in Lyncombe and Widcombe 'upwards of nine years'.

<sup>85</sup>This interest in the exact dating of the dispute, important in a lengthy suit commenced several months after the event, produced a series of replies that reveal something of the way people, sometimes illiterate,

The defence presented their version of the story in an allegation. Ferris's proctor responded with interrogatories for the three witnesses called to substantiate the allegation, the main purpose of which was to point out that, as Roman Catholics, they lacked credibility. (Adverse proctors generally made the most of the unreliability of witnesses, such as children, who might not understand or honour their oaths. Catholics, who were portrayed as being subject exclusively to the codes and punishments of their own religion, were intensively questioned on these points).<sup>86</sup> The account of events conveyed in these interrogatories, and which the witnesses

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functioned in a society that was placing increasing emphasis on time and punctuality. John Short jots in his 'Pocket Book' the next day: 'Mr. Lockyer and his Company created a riot at the House'. Hutton: 'I remember hearing the Clock strike the different hours during the night of the twentieth and morning of the twenty-first'. Eliza Horlor: 'for she and Her husband did in some day in the ensuing week refer to an Almanack to be satisfied that the Sun. preceding was on the twenty-first day of August, and her Husband desired her to bear the day of the month in remembrance'. Of the people involved in the cause, Hutton, Short, Mary Flinn, Mary Fairbairn, Ferris, Abraham Wickham, Eliza Horlor and Freelove Flower could sign their names. Chew, Joseph Reeves and Mrs. Wickham could not.

<sup>86</sup>In this cause, once deponents had been asked whether they 'follow and profess the Roman Catholic faith', they were questioned as to the nature of their oaths. Were such oaths binding upon 'their consciences', and would they be 'punished here after if they were to take a false oath upon the subject or whether they could get absolution from the minister of their own faith'? James Horlor (who was never called) was to be asked 'if he believes in future punishment for the misdeeds and sins committed in this world and whether he had not repeatedly said that he did not believe in God or Devil'?

were asked to verify, was one of a joke that had gone wrong. Lockyer, a lodger of two or three years standing, had been the subject of a prank devised by the Wickhams who 'said they would have some fun and keep Lockyer out of his room that night'. The ruse failed and degenerated into a violent brawl. The magistrates, however, dismissed the complaints against Lockyer and Hutton and Gilbert who were 'assisting ... Lockyer into the house', (Lockyer's summons was included as an exhibit in the allegation) and Wickham was made to pay the costs.

The witnesses called by Sarah Wickham were all resident at No. 17, Old Orchard Street. All three acknowledged their Roman Catholicism and upheld the value of their oaths. They offered depositions that were facsimiles of the allegation and must have answered the detailed interrogatories with monosyllables, for they, too, are regurgitated almost word for word. This was not simply a matter of coercion or of religious or neighbourly solidarity: overprepared questions discouraged spontaneous answers. John Short, a shoemaker aged 63 and upwards, had resided in the parish 'for the last twenty years', and had probably lodged with the Wickhams for the last ten.<sup>87</sup>

Short was in the house when the fight began, as were his

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<sup>87</sup>Short deposed in *Wickham v. Lockyer* that he had resided in St. James parish for ten years, which was the period he had known Mrs. Wickham and probably refers to his residence in the house.

fellow witnesses, Mary Flinn and Mary Fairbairn. Flinn, a singlewoman of about 27, had resided in the parish 'for the last twenty-one years' and, like Short, was born in Bath. Fairbairn, a spinster twenty-five years her senior, was a native of 'pimlico near London' and had resided 'for nearly two years last past' in St. James. In their version of the incident Maria Ferris returned home and was admitted to the house around the time that Lockyer arrived and was denied entry. A struggle ensued and some policemen appeared but they either did not interfere or told Lockyer to go away as 'he had no business there'. 'Lockyer used to come backwards and forwards to the...House to Mrs. Ferris for about two years to my knowledge previous to his dispute but he was not a regular Lodger there', deposed Fairbairn, and Flinn agreed with her. Short put it more succinctly: 'he slept there when he thought proper but was not admitted the Tenant'. Short denied participating in the struggle, and thought the summons was for creating a riot at an unseasonable hour, rather than for assault. He did not attend before the magistrates, and claimed to know nothing of their decision. He rejected the plaintiff's contention that the disruption had been so great that 'all the...persons in the house or most of them were...very late in rising the next morning'. He and his wife retired between two and three in the morning and rose at six o'clock, like most of the other tenants. He recollected

the circumstances, he added, 'because the disturbance made a strong impression on my Mind'.

Mary Flinn also stood on the sidelines though she was called as a witness before the magistrates. Fairbairn remained locked in her room, which did not create the difficulties the plaintiff's proctor imagined it would when she was called as a witness before the magistrates, because she was able to explain that 'I know all these circumstances from my Room being close to the passage with a thin wainscot partition through which I could hear every thing and also from my having looked repeatedly out of the Window, having got out of my bed so soon as Lockyer came to the Door'. She and Fairbairn thought the complaints had been dismissed.

Ferris's proctor elaborated on the narrative presented in the interrogatories in a final allegation. This time Maria Ferris, having overheard the Wickhams discussing their planned jest, went out to fetch Lockyer home. On her return, she waited to let him in, but the Wickhams intervened and pushed her out the door in a scuffle, Mrs. Wickham defaming her as she went. Lockyer then forced open the door, and he, Abraham Wickham and James Flinn scuffled again. Lockyer was thrown, 'and in falling pulled [Wickham's] shirt out of his bosom', which constituted an assault. At this point the Wickhams ran into the street and yelled loud enough to attract several

policemen, including Joseph Reeves 'who was Two Streets off'. Reeves shut the door to separate the combatants, and then listened to the tale told by Ferris and Lockyer. Ferris said she was too frightened to go into her lodgings, but Reeves offered to protect her. He took Ferris up to the first floor 'when he was convinced that Lockyer lived there from a Chest of Drawers full of his Clothes, Letters directed to him etc which were in the Room' but to put an end to the dispute he 'ultimately advised Lockyer to sleep elsewhere for that night'.

Joseph Reeves repeated the allegation with few variations. He was on duty near St. James Church when he heard cries of 'Murder' and 'Police' and 'hastened to the spot from whence the cries appeared to come, with another Policeman'. Mrs. Ferris and Charles Lockyer, 'who I know well', were in the street, and he listened to their explanations, telling Mrs. Ferris 'if she would go in and I heard no more of her that night I would protect her to her apartment'. William Hutton, called once again, revealed this time that he had been drinking with Lockyer in a public house in Old Orchard Street when Mrs. Ferris came in and said something to Lockyer that he could not hear. Lockyer left soon after she did, and Hutton followed him next door to his lodgings.

Many months later the judge delivered a judgement in favour of Maria Ferris, but decreed that Sarah Wickham

pay only two-thirds of the costs. Sentence was read 31 July 1838, and on 7 August Mrs. Wickham performed penance in court. Costs were taxed the same day at £41 3s. 9d., of which she was to pay £27 9s. 0d. She did not pay even this reduced sum, and on 15 January 1839 her contumacy was signified to Chancery.

By the time that judgement was given in *Ferris v. Wickham*, Charles Lockyer had lost his suit with Sarah Wickham. Mrs. Wickham contended that Lockyer had defamed her the morning following the dispute as he passed her on the stairs by saying, in recognition, "Yes Mrs. Wickham, George Adams's Whore". Present were Maria Ferris, who was with Lockyer, and two tenants. Short, called as a witness, explained that he had known Sarah Wickham for ten years and that she was 'a virtuous industrious and good Wife, and always considered by him...and her Neighbours a Woman of good reputation'. Lockyer, far from being a lodger, 'occupied and now occupies a House in...Walcot'. Eliza Horlor, the twenty-eight-year-old wife of James Horlor, a bootmaker, also characterised Sarah Wickham as industrious and hardworking. She knew of Lockyer's house in New King Street, but added that 'for the last three years he has been chiefly resident in the House...aforesaid', the house in Old Orchard Street.

The interrogatories on behalf of the defendant wasted little time on matters of substance and concentrated

instead on reputation, specifically sexual reputation. Had not Sarah Wickham 'before her...Marriage lived in a Common Brothel or House of ill fame in Avon Street in the City of Bath'? When and where, 'if at all', was Eliza Horlor married to 'her pretended Husband'? What was her previous occupation? Did not Horlor have 'another wife living--And if so how long since he was married to that Wife'? Had Eliza continued to live with him since discovering this fact, and if not how did she support herself? John Short was further queried about his relations with his neighbours. At the time of the original dispute 'he was made to pay costs and apologize for his having defamed Maria Ferris', and his written apology was annexed as an exhibit. He and his wife were also accused of 'annoying... Maria Ferris in various ways', Mrs. Short being so 'violent and indecorous' that Maria Ferris had the magistrates bind her over to keep the peace. Why, finally, was not Short on 'friendly Terms' with Lockyer, 'a Man of Property and a respectable Tradesman'?

John Short used his examination as an opportunity to give his opinion of his neighbours. He had known Lockyer 'for about three years, something more or less', but had 'little or no acquaintance' with him. He believed that Lockyer had initiated the dispute when he attempted to come in and Abraham Wickham refused him at 'that unseasonable hour, he being no Lodger'. He acquitted Mrs.



Wickham and dismissed the rumours about her past, having only heard them from Maria Ferris 'in a heat of passion'. He did not know her before her marriage, but no one believed the tales, 'the reputation of [Sarah Wickham] being during the time he has known her, so very good'. He had heard 'many Respectable Persons in the Neighbourhood... allude to the dispute and the defamatory words used by... Lockyer, and say that it ought not to go unpunished'; and 'her Neighbours and Friends', Mrs. Phelan, Mr. and Mrs. Hannah Dixon and Miss Charlotte Batterbury among them, 'think her an injured Woman, but she has not lost their acquaintance or good opinion, by reason that they do not believe there is any truth in what...Lockyer said of her'.<sup>88</sup> The exhibited apology he signed 'from his knowledge of the Character of...Ferris, and to avoid the risk of further Law expenses which he could not afford to expend'. He acknowledged the summons to appear before the magistrates, but denied any harassment of Ferris. As to Lockyer, he 'is not on Friendly or unfriendly terms with him...may be, by reason that the Defendant may consider himself in a higher station of Life than him...the...Defendant being considered a Man of Property, but whether or not he is a respectable Tradesman he...cannot take upon himself to answer'.

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<sup>88</sup>This may represent a further Catholic connection. A Mary Short stood sponsor, along with Richard Phelan, to Richard Batterbury in 1814: Williams, Post-Reformation Catholicism in Bath, 2:143.

Eliza Horlor had known Mrs. Wickham since she and her husband had moved into their lodgings three years before. She, too, had been woken during the night by the quarrel but had not ventured out of her room. Like John Short she had heard 'some Persons say that Mr. Lockyer...was a very bad sort of a Person to say what he did of Mrs. Wickham', and like Short she affirmed that nobody believed Lockyer's words or the charges previously made by Ferris. She was then called upon to defend her own reputation, which she did by saying she had lived in Bath nearly twelve years, in various places, and was

married to her present Husband James Horler six years come the ninth day of May next; they were married in St. Paul's Church in Bristol, and previous to her Marriage she obtained a livelihood by working at her Needle, and chiefly in Shoebinding for some of the first Master-Shoemakers in Bath...her Husband was a Widower when they were married and she has lived with him ever since.

Eliza Horlor had been born in Shepton Mallet, coming to Bath at the age of sixteen to ply her trade. Perhaps even now she assisted her husband at his bootmaking, though the work was rougher than what she had done before her marriage.<sup>89</sup>

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<sup>89</sup>The Census of 1851 lists 880 shoemakers, of whom 133 are women and 308 are 'Shoemakers' wives': Neale, Bath, p. 269. Shoemakers, cobblers and cordwainers were at the very bottom of the artisanal ladder in Bath; their trade was overstocked, their work was dirty and smelly and they employed their wives. The depression of the trade was reflected in the mortality statistics of those who followed it (p. 233).

Lockyer's proctor submitted another allegation, once again stressing the deficiencies of the witnesses' characters, as well as trying to disprove the libel circumstantially. According to this version of the story, Lockyer had walked the streets until seven in the morning after the original dispute, when he returned home and 'being fatigued and wearied for want of rest proceeded to undress himself and went immediately into his Bed and did not rise again until eleven o'clock that Morning'. Thus, he could not have been seen on the staircase at nine o'clock defaming Mrs. Wickham. Eliza Horlor was again accused of knowing of her husband's other wife, and witnesses were called to prove it. Finally, the statements about Sarah Wickham's past were elaborated upon. Before her marriage she was 'kept by one \_\_\_\_\_ Poole and commonly went by the name of "Bradford Sall" and that during that period and for some considerable time after her Marriage...was a Common Prostitute upon the Town'. This colourful contention was dropped from the allegation, presumably because it could not be verified, despite Maria Ferris--the originator of these rumours, according to Horlor and Short--being called as a witness.

Mrs. Wickham's proctor challenged this version of events in his interrogatories. In addition, he suggested that Lockyer was a married man with a house at No. 41, New King Street who kept apartments in Old Orchard Street for

his mistress. Ferris was urged to admit that she had sued Mrs. Wickham at the instigation of Charles Lockyer, who procured the witnesses and paid their expences.

William Hutton was examined for the third time, on this occasion adding that he spent the entire night with Lockyer after he was refused entrance at No. 17, Old Orchard Street. They returned to Lockyer's lodgings 'on the drawing room floor' at seven, and Hutton departed about an hour and a half later, having seen no one in the house. Hutton admitted that this was the only time he had been in Lockyer's rooms, and he only knew that they were his 'by his saying they were his apartments, and he had paid the Landlord the rent'. He knew of the residence on New King Street, and had earlier agreed that Lockyer was the principal tenant at No. 17, Old Orchard Street, but he denied knowledge of Lockyer's marital status. One wonders what they talked of all night.

We discover from Ferris's deposition that she was a singlewoman aged about 36, resident at No. 6, Pierrepont Place in St. James for 'about three quarters of a year last past' (which means she must have left Old Orchard Street a few months after the incident). According to her testimony, Lockyer returned home in the morning with Hutton and John Gilbert, and they were later joined by Mrs. Gilbert. Lockyer went into his bedroom to sleep just before the guests left and did not awaken until afternoon.

Ferris, who had spent the night in the house, asserted that all of the people named as witnesses to Sarah Wickham's defamation were in bed when Lockyer came in. She of course denied that her suit had been instigated by Lockyer. Lockyer, she claimed, had occupied the rooms as a tenant for four years previous to the incident, 'and I resided there as his Housekeeper'. She denied his Walcot address and his marriage.

Amelia Chew and Freelove Flower, a widow of 45 and upwards and a former neighbour of Chew's, were asked to verify James Horlor's bigamy. Chew remembered the marriage taking place 'between five and six years ago...[he] was not at that time a Widower but his lawful Wife was living on the Borough Walls in the City of Bath - I knew her and knew her to be the Wife of James Horlor'. She had since left Bath, but Chew was sure that 'Eliza Horlor was well aware when she married James Horlor that he had a former Wife living'. Questioned about Lockyer's residence, she answered, 'I have every reason to believe that Charles Lockyer was not residing at a House...in New King Street...previous to and on [21 August 1836]'. Well-informed about the Horlors'. Marital irregularities, she was unaware of Lockyer's. Freelove Flower simply stated that Horlor was not a widower,

for that his lawful Wife was then and to my knowledge nearly twelve months afterwards living and I knew her

well And I am confident this was well known to...  
 Eliza Horlor - I do not know whether Horlors lawful  
 Wife is still living as she left Bath some years since.

Sentence was read against Lockyer on 16 January 1838, his efforts to discredit the witnesses in vain. His proctor, at the next session, asserted that Lockyer was too ill to appear to see the sentence executed. Costs were taxed on 8 May and Lockyer performed penance in court on 19 June and paid his costs of £26 18s. 8d., thus ending the cause.

That there were antagonisms between the residents of No. 17, Old Orchard Street is undeniable, and they may have originated in differences in class or religion or even in the sexual and marital practises peculiar to each group. The occupational structure of the house, or what we can see of it, reflected that of the city as a whole. Lockyer was a tradesman; John Short and James Horlor were artisans, members of the depressed boot and shoe confraternity, who probably depended on the labour of their wives; Mrs. Wickham kept a lodging house (Amelia Chew refers to its as 'the House of Mrs. Wickham', Mr. Wickham was no doubt otherwise employed); and Maria Ferris, like a third of those who worked in Bath in 1841, was a domestic servant.<sup>90</sup>

Lockyer, for all his wealth, does not appear to have

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<sup>90</sup>See Warner, History of Bath, pp. 214-16; Wroughton, 'Bath and its Workers', pp. 5-6; Neale, 'Bath 1800-1850', p. 8.

been a popular man at the lodging house and when hostilities broke out in August 1836, he found himself effectively isolated. Neither he nor Ferris called a witness from among the tenants. They relied instead upon a tailor whose intimacy with Lockyer seemed to be confined to pubs (he had never met Ferris and had never been to Lockyer's rooms, regardless of how many of the details of Lockyer's life he intentionally obscured) and two women, former neighbours in nearby Galloway Buildings, at least one of whom had not known Ferris prior to the incident and yet had some reason to be at the lodging house in the middle of that August night. William Hutton and Joseph Reeves, who, like Maria Ferris, were in their mid-thirties, had been born, as she had, in Wiltshire, but the men claimed to know Lockyer rather than Ferris.<sup>91</sup> Chew and Flower were both born in Bath and had taken up residence at some of its worst addresses in their lifetimes. None of these witnesses were of equivalent rank with a man of property, though all of them had lived in the city long enough to have known Ferris or Lockyer since they had lived at Orchard Street. John Gilbert and his wife, mentioned several times in the suit, do not appear at all. Religion and class may have conditioned the Wickhams and their tenants to close ranks (the religious affiliation of the

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<sup>91</sup>The lack of punctuation in Reeves's deposition makes it impossible to determine whether it was Lockyer, or both Ferris and Lockyer, who he knew well.

Wickhams, as of Ferris and Lockyer, is never stated in the cause papers), thus depriving their adversaries of witnesses who may have known them better than did those they cited.

Sarah Wickham was able to exhibit a more stable group of supporters: two Bath natives who had lived in the city for at least twenty years, and two other tenants who had lived in her house two and three years respectively. Whatever the impression the two groups of witnesses made on the judge, the latter collection were able to testify positively and enthusiastically to Mrs. Wickham's reputation, something no one was able to do for Maria Ferris. (Lockyer's reputation, of course, was never the subject of direct questioning, except perhaps when Short was asked if Lockyer was a respectable tradesman). In a cause where reputation was so closely scrutinised and the actual events were a subsidiary issue, Ferris could ill-afford the absence of convincing character witnesses.

The range of sexual insults traded during litigation tells us something of admissible standards of conduct as well as of the extent to which deviation was tolerated. Each allegation, from the whoredom of Maria Ferris and Sarah Wickham and possibly Eliza Horlor to the bigamy of James Horlor and the adultery of Charles Lockyer, is denied or countered by testimonials of good reputation, but there is an undercurrent of tolerance for many of these



abuses. Ferris, even if she was 'Lockyer's whore', a woman of ill-fame and the mother of a bastard, had been a tenant at Old Orchard Street for several years and Lockyer, if only because he paid the largest rent, was admitted regularly to sleep. At least two women claimed to know James Horlor's surviving wife, and yet they did no more than gossip about her. If Sarah Wickham, a.k.a. Bradford Sall, had lived in a brothel prior to marriage, John Short thought that the purity of her married life and his ignorance of her past were sufficient to establish her current good reputation. Sexual derelictions, real or imagined, could be summoned up in times of hostility, as they were here. But it often took some external event to bring these objections to the surface and to interrupt the normal pattern of tolerance. The lack of privacy in a lodging house no doubt diminished the safe anonymity of the big city, and when disputes arose tenants could use the personal knowledge they had gained through gossip and observation to punish their neighbours.

#### VI. Conclusion

As Bath has little trade, and no manufactures, the higher classes of people and their dependents constitute the chief part of the population; and the number of the lower classes being but small, there are consequently few whose avocations are not known, and whose persons and characters are not familiar; a notoriety that necessarily operates with them as a powerful check upon all attempts at open fraud, violence, or breaches of the peace.<sup>92</sup>

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<sup>92</sup>Warner, History of Bath, p. 344.

The Rev. Richard Warner's assertions as to the numbers and occupations of the lower classes, undermined as they are by some of the information in his own book, have been thoroughly overturned by R.S. Neale and other contemporary historians who have analysed census data for the city in the nineteenth century.<sup>93</sup> It is the second half of the statement quoted above that has some bearing on defamation litigation in Bath in the fifty years after Warner wrote. The city depicted in depositions is one swarming with strangers: witnesses picked out the faces they knew in Joseph Nowell's backyard or before Sarah Wickham's lodging house and disowned the rest. The endless struggle of the authorities, both civil and philanthropic, to identify persons and to ascertain characters testifies that the avocations of all too few were known. Bath was visited by the very poor as well as the very rich--the Society for the Suppression of Common Vagrants found lodgings for more than 800 non-begging tramps in 1830--and the transient element of the city's population, though unlikely to become embroiled in defamation litigation, could not have been very

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<sup>93</sup> Warner himself notes the large clothing mills over the river in Twerton, the largest of which employed 300 adults and eighty children, and prints an occupational survey of the city in 1799 that includes in the vicinity of 200 occupations: History of Bath, pp. 214-16. Though this clearly underestimates the numbers following individual trades, it give some sense of the diversity of lower class employments in Bath at the time he was writing.

well-known to the residents of the upper town.<sup>94</sup> Whether or not enough was known about the permanent population to limit the violence Warner feared (and even Neale's incomplete crime statistics demonstrate that it was not), the people of Bath could capitalise on what they experienced as something less than a face-to-face community, as well as on pockets of intimacy, in order to defame each other and to prosecute their defamers in court.<sup>95</sup>

There are several reasons why the problem of reputation must have seemed peculiarly acute to women of the lower classes in Bath, among them the economic and demographic position of these women and the more complicated standards against which their reputations were judged. The characters of servants may have been well known to their masters, but an out-of-work servant such as Mary Ann Baker desperately need a character from her former mistress in order to find a new place: she could not rely on the familiarity of her person or her character. For the poor of the city, from the genteel to the down-and-out, charity could often only be obtained once the

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<sup>94</sup>Haddon, Bath, p. 157.

<sup>95</sup>Neale, Bath, pp. 85-94. Neale draws his conclusions from the records of Bath Quarter Sessions for the years 1777, 1778 and 1787-93. Although he has mistaken the process by which felonies were prosecuted, he is still able to demonstrate the prevalence of such crimes against the person as assault, riot and breaches of the peace.

obstacle of character had been cleared: the House of Protection established in 1805 for friendless girls ready to leave school only accepted distressed young women in possession of a change of clothes and a good character.<sup>96</sup> That the choices for young women without friends, and therefore with less access to any resources, including good references, lay between prostitution and servitude was tacitly recognised by philanthropists who established this and other charities to channel the unprotected or reprocess the fallen into domestic service.<sup>97</sup>

Work opportunities for women were far more extensive in Bath than in the countryside, and taking women out of their homes and putting them behind counters and market stalls or into the streets at odd hours increased their vulnerability to public insult. Women could find their livelihood jeopardised, as Caroline Taylor and Sarah Fisher did, by an accusation of whoredom; they could be defamed, as Elizabeth Phipps was, as they made their way

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<sup>96</sup>Egan, Walks through Bath, p. 185. The Strangers' Friend Society, founded by the Methodists in 1790, was unusual in paying no attention to the causes of an applicant's distress, drunkenness being one habitual bar to private relief (p. 198). Pregnant singlewomen, unwed mothers and abandoned wives made up the bulk of the applicants for poor relief in Neale's sample for the years 1763-74: Bath, p. 72.

<sup>97</sup>Mainwaring, Annals of Bath, pp. 53; 199. Charities for prostitutes included the Female Penitentiary for the Reform of Prostitutes in Walcot Street, to which was added an isolation hospital for those suffering from venereal disease: Haddon, Bath, p. 158.

home late at night. In a city where the engine of population growth was the migration of young people, and especially young female servants, the disproportion of women to men of marriageable age could make courtship a precarious process, marriage an unobtainable goal.<sup>98</sup> The demographic imbalance also guaranteed that the conflict between men and women so clearly illuminated in the provincial causes took place alongside an equally keen conflict between women, fuelled by competition over jobs, resources and men, which similarly found expression in defamation.

The women of Bath were measured against standards that emphasised ideals of strictly female respectability and propriety that had not yet been universally adopted by plebeian men and women. Some of these standards were disseminated by the city's many religious sects, others were enforced by employers anxious to create a tractable workforce. Factory girls across the river in Twerton were fined for drinking in pubs and advised to shun regular drinkers. 'It is hoped', stated the factory rules of 1832, 'that young women who are disposed to live respectably will

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<sup>98</sup>See Neale, 'Bath 1800-1850', p. 14, for a breakdown of female employment taken from the 1851 census and Corfield, Towns, p. 99, for the demographic basis of courtship problems.

consider it a disgrace to associate with such persons'.<sup>99</sup> It may even be argued that the presence of the thriving sex trade, of streets 'so crowded with prostitutes' and brothels and bawds, imposed yet another standard against which women were judged and added to the seriousness of sexual insult.<sup>100</sup> Witnesses immediately understood references to Avon Street, and for many women in Bath prostitution would not have been an inconceivable alternative to low wages (their own or their husbands') or starvation.

Over one hundred Bath residents, men and women, brought defamation suits in the episcopal court between 1733 and 1799; and at least an equal number of Bath women did so in the first fifty years of the nineteenth century. Defamation litigation in the rest of the diocese, however, followed a different pattern: the episcopal court heard three times as many causes in the earlier period, from parishes outside the city, as it did after 1800.<sup>101</sup>

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<sup>99</sup>Wroughton, ed., Bath in the Age of Reform, Appendix. Factory discipline also involved education and church attendance. Large factories, such as the broadcloth manufactory in Twerton (which provided 'neat and comfortable' housing for workers: Egan, Walks through Bath, p. 168) could exert some control over the activities of their workforces, but it is difficult to judge how far this contributed to the absence of defamation litigation in this parish in the nineteenth century.

<sup>100</sup>Skinner, Journal, p. 231.

<sup>101</sup>Episcopal causes from Bath, 1733-99: 116; 1800-51: 114, but the latter figure excludes many causes

In this chapter we have considered some of the conditions and circumstances that may have made nineteenth-century Bath more fertile ground for defamation litigation. Living and working patterns, the crowded lodging house and the frequent employment of women in the manufacturing, retail and service sectors, contributed to an environment in which feuding could thrive and litigation--to placate customers or employers or neighbours--was often necessary. The ubiquity of the police and the facility of access to solicitors encouraged litigation, while the absence of arbitrators with sufficient authority to enforce their decisions (Harriott Hooper fails in her attempt to reconcile Mrs. Collett and Mr. Tarring, and William Warden threatens to drag his feuding tenants to the Guildhall) made litigation, and much lengthier litigation, a more likely outcome to simple disputes.

Some of the differences between Bath and the county of which it was a part were a matter of degree; similarities may be easily identified between the causes discussed in this chapter and those originating outside the city in the same period. The civil authorities are invoked more frequently in all the cause papers after 1800, and the tendency to litigate rather than to confess or to settle is not unique to Bath. Defamation proceedings

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lost in the gap in the Act books. The figures for provincial causes are approximately 590 and 190; for the archidiaconal court of Wells, 178 and 111.

were being assimilated into an adversarial legal system in which victory in the courts and the harassment of a foe superseded the public reclamation of a damaged reputation and the restoration of communal harmony. The changes, both legal and social, came more thoroughly, and presented themselves more starkly, in the city of Bath in the nineteenth century.



**SECTION FOUR: MALE REPUTATION**

## CHAPTER 9

## MALE REPUTATION

Anything wrong about a man was but of little moment,--comparatively so, even though he were a clergyman; but anything wrong with a woman.... [Anthony Trollope, Dr. Wortle's School, Oxford, 1984 (written 1880), p.118]

I. Introduction

There is a lengthy literary tradition which beats the often hazy bounds of permissible male behaviour, but the rich descriptions if not the paradoxes of this literature are absent from the legal records from which the material in this chapter is drawn.<sup>1</sup> Without the transcripts of relevant trials, the qualities cited as proof of good male character--Randolph Trumbach notes that accused sodomites often claimed they were married, virile and religious--are less evident than some facets of ill repute. Smollett's creation, Matthew Bramble, could denounce a man as 'a brutal husband, an unnatural parent, a harsh master, an oppressive landlord, a

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<sup>1</sup>For one of many examples, see Fielding, Amelia, an extensive catalogue of offences against male honour and the ways in which these breaches could be healed outside of court.

litigious neighbour and a partial magistrate', but our sources rarely do more than hint at the ways in which male honour could be made and unmade.<sup>2</sup>

In one regard, however, the literary and legal sources are in agreement: sexual reputation was not of paramount importance to men, as it was to women. Where it mattered at all, the sexual misbehaviour that led to the loss of reputation in men and in women was substantially different. The lack of concern with illicit heterosexual activities is nearly universal--and encompasses men of all classes--in eighteenth-century novels. Among men, only the uncomfortably religious and the Scottish (when in Scotland) value their sexual propriety. Thus, Smollett could depict Squire Bramble, an upright man, as good-humouredly accepting responsibility for nine bastards falsely sworn to him and could make Roderick Random, whose sexual activities had led to his current diseased state, declaim as follows when he was chased from his master's house after being charged with stealing from him:

I found myself, by the iniquity of mankind, in a much more deplorable condition than ever: for though I had been formerly as poor, my reputation was without blemish, and my health unimpaired till now;--but at present my good name was lost, my money gone, my friends were alienated, by body infected.

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<sup>2</sup>Smollett, Humphry Clinker, p.205.

It was not until he was accused of stealing that the apprentice's reputation was touched.<sup>3</sup>

In practise, though male reputation was far more closely associated with issues of honesty and bravery than with sexuality, the concern for sexual reputation was not as thoroughly quashed among the plebs in the eighteenth century as Smollett suggests. Men continued to defend their sexual honour in the church courts and their declining numbers among the courts' clientele mirror the unreceptiveness of court personnel as well as the final elimination of the heterosexual element from popular definitions of male reputation. Men remained

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<sup>3</sup>Ibid., pp.56-7; idem., Roderick Random, p.114. Of course, Roderick Random is a gentleman by birth and outlook and has already, at this point in the story, made it clear that he rejected the more egalitarian sexual morality of the Kirk. The paradoxes of the literature of male honour are rife, and Humphry Clinker is not without them. For instance, Bramble's nephew claims that 'the 'squire is one of those who will sacrifice both life and fortune, rather than leave what they conceive to be the least speck or blemish upon their honour and reputation' (p.324) and that 'he is afraid of nothing so much as dishonour' (p.57). The birth of a bastard certainly did not have the devastating effect on the reputation of the father that it had on the mother's reputation. Among those who could afford to support spurious offspring, and whose religious scruples did not prohibit this form of recreation, fathering bastards was looked upon with a benign eye. Bramble's equanimity in the face of the false accusations may in some part be accounted for by his strong sense of the duties and responsibilities of a gentleman in a hierarchical rural society; when it comes time for his feckless nephew Jerry to compound for a bastard, the younger man hopes that this supposed proof of his virility 'might have given me some credit' (pp.56-7;89).

subject to gossip and to many of the same forms of communal chastisement, such as charivari, as their wives and sisters did. Though gossip was condemned as a female vice, its prevalence among men was recognised; nor did men voluntarily circumscribe their regulatory role by abstaining from participation in shaming rituals aimed at other men.<sup>4</sup> However, the avenues open to men for defending their honour were far wider than those available to women. The pen and the sword came more readily to the hands of men, and while physical violence did not recognise distinctions of gender, duelling, as far as one can tell, was an exclusively male pastime.

In the pages that follow we will look at male honour, broadly defined, and at the changing definitions of male sexual reputation that characterised this period. Because male honour was so much more heterogeneous than female honour, these redefinitions more clearly reflect alterations in the sexual economy in the eighteenth and nineteenth centuries, and particularly the hardening of gender roles in the hundred years following 1750. We may detect, at the start of our period, remnants of a more egalitarian popular sexual culture which

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<sup>4</sup>Billingsley, General View of Agriculture, 2nd ed., p.102n, champions contract labour, by piece or task, because for the day labourer 'a considerable portion of the day is wasted in sauntering, holding tales, and in a sluggish use of those limbs which are capable of more lively motion'.

required both men and women to defend their sexual honour. As interest in illicit male heterosexuality waned, two aspects of male sexual reputation remained important, in life if not in literature. The adoption of the double standard, we have argued, released men from the direct defence of their sexual reputations, but it also shifted attention to the reputations of married women and therefore probably increased male sensitivity to the charge of cuckoldry. And if men could ignore the consequences of their heterosexual acts, their participation in unnatural acts continued to lead to dishonour and even death. Cuckoldry constituted one form of male passivity, sodomy another, and each represented a blurring of the line between increasingly polarised concepts of masculinity and femininity.

This chapter is divided into five sections that in part reflect the kinds of evidence that have contributed to our picture of male honour. The first two sections are concerned with the reputations of private and public men and the different ways in which they defended them. In discussing private men we will focus on what remained the most vulnerable point in the sexual reputation of men of all ranks, their susceptibility to the charge of cuckoldry. Our material on public men, drawn mostly from criminal libels prosecuted at Quarter Sessions or Assizes, will be used to illustrate the broad and

primarily non-sexual nature of male reputation. In the next two sections we will consider public shaming rituals and blackmail; first as general guides to attitudes towards male conduct, and then more specifically in terms of unnatural acts. While the adoption of the double standard rendered male heterosexual misbehaviour inconsequential, it did not protect men accused of buggery. Popular abhorrence of the crime and the legal penalties attached to it made it a potent weapon in the hand of the blackmailer and the most serious threat to a man's sexual reputation in our period. In the last section we will examine some aspects of the life and writings of Henry Hunt, the radical reformer and one of Somerset's most famous prisoners. As an unconventional individual and as a participant in a distinctively sexualised political culture, Hunt provides us with a final illustration of male reputation that points to the broader notions of sexuality and sexual honour that were shared by many of the women of this time.

## II. Private Men

Blood and wounds! (cried Weazel) d'ye question the honour of my wife, madam?--Hell and damnation! No man in England durst say so much.--I would flea him, carbonado him! Fury and destruction! I would have his liver for my supper. [Tobias Smollett, Roderick Random, Oxford, 1981 (written 1748), p.51]

It is not the reputations of public and private men that differ so much as their vulnerability to particular kinds of insults and the means available to them for redressing their grievances. Because of the nature of the libel law, the practise of the church courts and the cost of private actions in the common law courts, legal records can tell us very little about the defence of the honour of common men. One could hazard the guess that it is the prosecutions for assault and other breaches of the peace that, were they more forthcoming, would have the most to say on the subject. Instead, we must rely upon the circumscribed evidence of the church courts--the handful of defamation causes brought by men, others which speak explicitly of male honour and the prosecutions for brawling in church--and the occasional criminal action, for libel or riot, that brought a private man to court. While this material reinforces the view that male honour was heterogeneous and increasingly unconcerned with the sexual lapses of men, it also reminds us that common men retained, and perhaps enlarged, one point of vulnerability relating to sexuality in our period. If, as Lawrence Stone says, 'a man's honour depended on the reliability of his spoken word; a woman's honour on her reputation for chastity', it was also true that a husband's reputation could not be divorced from



that of his wife.<sup>5</sup> Captain Weazel, quoted above, mimics the language and mores of eighteenth-century aristocratic gallantry, but his response was not confined to the upper classes or to their former valets.<sup>6</sup> It would find an echo, throughout our period, in the defamation causes brought by married women at Wells.

The defamatory libels directed at men of the seventeenth and early eighteenth centuries illustrate a sensitivity to sexual reputation that was on the decline in our period. Quaife notes that charges of sexual incontinence aimed at masters by their disgruntled apprentices found their way into court; and even in the early eighteenth century Wells Court was entertaining suits about keeping or lying with whores and other forms of male sexual behaviour.<sup>7</sup> Of the handful of suits

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<sup>5</sup>Stone, Family, Sex and Marriage, p.503.

<sup>6</sup>Smollett, Roderick Random, p.51. The situation is ironic, for Captain Weazel, who speaks these words, is a valet who has been married off to his master's former mistress. Weazel is therefore a cuckold of sorts, and he is far too cowardly to carry out his threat, which is addressed not only to a woman, but a woman of no character, a prostitute. Weazel and his wife, in aping the manners and punctilios of their masters, are enacting another irony, for Smollett goes to great lengths to depict their beloved aristocracy as libertine and degenerate.

<sup>7</sup>Quaife, Wanton Wenches, p.160. He also includes cases of men who prosecute couples for charging them with seducing or raping the wife - the latter cases that surely should have found their way into the common-law courts (p.142).

brought by men in our period, most are concerned with insults directed primarily at a mother or wife. Few causes went far enough to produce depositions; of those that did, only one has survived. Ralph White's suit suggests, however, that even in the 1740s some men were willing to litigate over insults to their own sexual reputations, and that though the disappearance of male plaintiffs reflected a popular redefinition of male reputation, and particularly the adoption of the double standard, it was also the result of pressure within the courts.

Joseph Palmer, a neighbour and scribbler, and Ann Harvey, a spinster, were in the Bruton garden of Ann's maternal uncle, Ralph White, in 1742.<sup>8</sup> Palmer was 'shearing and spricing up' the hedge that separated the gardens of White and his neighbour William Smith. This threw Smith into the indispensable great passion and he told Palmer to get off his ground before he killed him. White urged Palmer to 'keep on his Business and mind his work'. Smith, still addressing Palmer, threatened, 'you whoresbird if you don't go out of my Garden I'll cutt your Legs of'; he then tried to hit him with a great stick. White intervened and Smith turned on him saying, 'he had had three bastards and also that he was the son

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<sup>8</sup>White v. Smith, D/D/Cd 134(1742) (A.W.).

of a whore'. (Smith was probably referring to White's legitimate children rather than suggesting that White had been burdening the parish with spurious issue). Clearly, Ralph White thought that the charge of having fathered three bastards--even if, in this context, Smith was casting a slur on White's legitimate children and on the status of his marriage--was injurious to his reputation, and if his dispute with his neighbour had a deeper foundation than the incident in the garden, he felt that the insult was sufficient to build his litigious revenge on. This would be the case in fifty years, when men received such direct insults with equanimity, cared less for the reputations of their mothers and countered only those insults inflicted through the medium of their wives.

Private individuals who attacked each other in church or churchyard, verbally or physically, could bring suits for brawling in church, and a few men were thus enabled to use the church courts to punish those who insulted them long after they had ceased to bring defamation suits. However, there is nothing explicitly sexual about the insults that follow and they could not, therefore, have been used as the basis for defamation litigation even in the early eighteenth century. Hugh Moore prosecuted John Kingdon for getting up in Withy-poole church in 1758 and saying: 'Gentlemen or Neigh-

bours pray stop, Justice Moor meaning the said Hugh Moor is going to hang his Clerk but dam him if he pays what he owes, he is not worth one farthing, and God dam him I'll bring him to \_\_\_ before I have done'. Two years later, John King the elder called Philip Stephens 'a rogue a dog and villain' in Leigh on Mendip church. In 1776, Lewis Cogan of Taunton St. James used many of the same expressions to describe John Haydon. He called him 'A Rogue, Scoundrel, Dirty Dog, Villain', threatened Haydon with his fist and declared, 'If it was not in Church I would beat or knock thy Head against the Wall'. Later, in the churchyard, Cogan pulled off his clothes and threatened to fight Haydon.<sup>9</sup>

Other disputes over male honour ended up in the church courts as late as the nineteenth century because women intervened in them and provided acceptable plaintiffs. The opportunities for sociability and intoxication available at pubs were reproduced on a larger scale at fairs and revels, celebrations which encouraged competition among men, some hoping to win games, others to win brides. The resulting conflicts over male honour were often resolved, no doubt, in brawls that did not lead to legal proceedings, but it was the interference of women in this manly pursuit that provoked defamatory

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<sup>9</sup>Moore v. Kingdon, D/D/C (1758); Stephens v. King, D/D/C (1760); Haydon v. Cogan, D/D/C (1776).

words and brought the two causes that follow into the church courts.

A dispute broke out between Joseph Bissecks and George Weeks in the field 'nearly adjoining the Club House' in the mining parish of High Littleton on the evening of Whit Tuesday, the club day, in 1805. (Whitsun was the main holiday time for miners, and Whit week was reserved for local club days).<sup>10</sup> When Weeks denied that he had been cheating at bowls, Bissecks offered to fight him for a guinea. 'I dont want to have any words with thee', Weeks replied. 'I am very quiet by myself but I have a one pound note and the money is not far off'. Bissecks began slugging and Mrs. Weeks came into the field to break up the fight. Infuriated, Bissecks told her '"thou has not your Teague playing with thee now" the Plaintiff then asked the Defendant what he meant by Teague who answered her you are a Damnation Teague's Whore'.<sup>11</sup> The leap from issues of male honour (honesty and physical courage) to the chastity of Weeks's wife is not such a long one, given the rhetoric of male and female honour. If Weeks was unable to keep his wife from

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<sup>10</sup>Weeks v. Bissecks, D/D/Ca 440 (1805) and D/D/C (1794-1815); and Bulley, 'Coal Industry', p.124. The amount of money being wagered suggests that Weeks and Bissecks earned a high wage, and may have been miners.

<sup>11</sup>paul-Gabriel Bouce, in his notes for Smollett's Roderick Random, p.469, states that 'Teague' was an English nickname for an Irishman.

interfering in his honourable combat, he was equally unable to control her sexual life.

Queen Camel Fair night in 1813 was the time chosen by the Baker and Cox families, neighbours in Yeovilton parish, to insult each other.<sup>12</sup> Thomas Hockey otherwise Gliston, a seventeen-year-old day labourer, watched the fight from his master's door. It began when Sampson Pittman told James Baker, his master's son:

there is that Man Mr. John Cox (who was then standing at his ffather's stable door) who challenged to fight me at last feast will you be now my second upon which James Baker said I suppose you don't want much of a second when Cox immediately said "who cared for Baker's being a second Cow hearted Son of a Bitch I cou'd lick ten such ones"...Mary Baker [James's sister] then said John Cox don't you brag of your Manhood I'll have a Claw at thee, the Defendant [Cox's mother] who had been also standing at her door came out over the threshold of the door on the ffront stone and bawled out to the plaintiff..."Get in you nasty stinking black looking whore".

Mary Baker and Mrs. Cox continued to trade insults, calling each other 'Barking whore' and 'nasty whore' until Mrs. Cox declared 'Damn thee we have got enough' (probably an allusion to her intention to sue) and went in, trying to take her son with her. But, according to Thomas Hockey otherwise Gliston, he stayed at the door 'cursing and swearing and telling James Baker that his father was a thief'. Whether this incident was

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<sup>12</sup>Baker v. Cox, D/D/C (1813). Witnesses admitted that Mary Baker had confessed to calling Mrs. Cox a whore, but because of the gap in the Act books, there is no record of this suit.

a single episode in the rivalry between two farming families, or whether it was the spontaneous product of a day of merry-making, it does demonstrate a willingness on the part of women to defend the reputations of their male kin, even to the point of violence (and an equality between masters' sons and their servants such that they could second each other in combat). Physical courage, the readiness to fight an adversary, were seen by both the men and the women in this cause as an essential component of male honour.

While the preceding causes illustrate some of the aspects of honour and reputation that men found worth defending in our period, adultery was undoubtedly the leading sexual concern of men of all but perhaps the highest and lowest classes. It was not, however, their own adultery, but the adultery of their wives that threatened men's reputations. Though male adultery attracted little notice, except where it resulted in the birth of a chargeable bastard, the adulterous wife posed a continual threat to the honour of husbands and the peace of communities. The disruptive power of female adultery may in part be explained by its flagrant disregard for male property rights, but where property was less of an issue, it was the way in which adulteresses overturned the social relations of patriarchy that proved unsettling.

Just as physical dominance was seen as an essential element of maleness, sexual dominance, the ability to govern wife and household, was an essential characteristic of husbands. Thus, the insult of cuckoldry (the charge of sexual passivity) frequently carried a subtext of physical cowardice. Thomas Gow was taunted by a man who publicly told him to '"go in you poor Cuckold, you hornified son of a bitch, you cukold headed son of a Bitch" and offered to fight him' and by another who offered to beat his head 'as big as a Pumpkin'.<sup>13</sup> To be identified as a cuckold, either by having horns pinned to one's door, or by having one's wife called a whore, was enough of an insult to keep the church courts in Somerset active into the middle of the nineteenth century.

We have suggested that the dissemination of the double standard was accompanied by a growing interest in the sexuality of married women. As men ceased to bring actions at Wells, injured wives occupied a greater and greater proportion of court time. Accusations of sexual misbehaviour passed into the realm of the acceptable, even the complimentary, for men, but words implying the passive crime of cuckoldry retained their offensive character. Church court officials were quick to recognise the blow to a husband's reputation embodied in the word

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<sup>13</sup>Gow and Gow v. Elms, Witherell, Wellam, D/D/Ca 434 (1774) and D/D/C (1774).



'whore' and on occasion, in the eighteenth century, went so far as to bend the rules and accept causes in which men had been directly insulted as cuckolds. While the law required that the injury to the woman's reputation be demonstrated in these causes, and witnesses were questioned accordingly, the involvement of male honour cannot be overlooked.

On a Sunday in early March 1759, John Brooks and his friends emerged from the house of James Holbrook, opposite the house of John Charmbury, in Bathampton.<sup>14</sup> A tiny parish on the outskirts of Bath, Bathampton supplied the city's tables from its market gardens and its quarries provided the stone for its buildings. According to Joel Pearce otherwise Whittick, a fisherman, Brooks 'shook his stick at the dog of [Charmbury] thro' the pales before the producent's door'. Charmbury asked Brooks 'what he did that for and [Brooks] said he did it not and thereupon a Quarrell ensued'. In the course of

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<sup>14</sup>Charmbury and Charmbury v. Brooks, D/D/Ca 426 (1759) and D/D/C (1759). Collinson, Somerset, 1:116, describes Bathampton as a parish of twenty-six houses ranged along a single street surrounded by meadow and pasture. Yet Brooks's insults were administered in a manner more familiar to towns where it was not uncommon for disputants to face each other on the street, before their houses. The fact that the Charmburys were able to call four witnesses (with some difficulty) who had been in the company of their adversary, and who nonetheless substantiated their claim and spoke warmly of Dionis Charmbury, suggests that whatever animosity existed between the principals did not extend to their mutual acquaintances, employees and neighbours.

the quarrel Charmbury called Brooks a 'lying rascal' and Brooks replied 'Damn you and your Dog...if he did shake his stick at the...Dogg he would do it again...he was a little ram's headed son of a bitch and ought to have a pair of horns hung up at his door'. Another witness heard Brooks call Charmbury a 'Cuckoldy son of a bitch' and threaten to 'strike his head through the wall'. These words meant, according to the libel, that Charmbury's wife, Dionis, 'had been guilty of lewd pranks and had committed whoredom and that he...deserved to be noted for a cuckold or the husband of a whore'.

Fifteen years later, Hannah Gow and her husband Thomas prosecuted three of their Wells neighbours, John Elmes the younger, John Witherell and Elizabeth Wellam.<sup>15</sup> Charles Rogers, a twenty-one-year-old native of Wells who lived 'in the neighbourhood' of the contending parties

was going home to Dinner some time in the latter end of August last...he heard the...plaintiffs and [Elmes]

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<sup>15</sup>Gow and Gow v. Elmes, Gow and Gow v. Witherell, Gow and Gow v. Wellam, D/D/Ca 434 (1774), D/D/C (1774). The Gows were more successful than the Charmburys at Wells Court. This may in part have been because Dionis Charmbury was not physically present when her husband was insulted; Hannah Gow was, and later confessed to calling Elizabeth Wellam a whore on the same occasion. Thomas Gow, apparently, had not been caught out in any defamatory activity, which suggests that he had left that to his wife: Wellam v. Gow, D/D/Ca 434 (1774) and D/D/C (1774). The Gows may have also benefitted from the plight of their adversaries whose proctor, Ralph Sutton, died during proceedings.

quarrelling in the Street called...Priest row and... as he stood at his door [he] advised...Thomas Gow to go in but not going in...Elmes called...Gow a Cuckold contented Cuckold ramsheaded Cuckold and hornified Cuckold and gave both him and his wife great abuse in the presence of...many other persons thro' which this Deponent believes...Gow's Wife's character is much injured.

The word protested in the libel was 'cuckold', but it meant, according to the document, that Hannah Gow was guilty of adultery. Three other neighbours in Priest Row added colourful variations on the words recalled by Rogers, and they all agreed that it was Hannah Gow who had been injured. According to Jenny White, 'since the abuse given...Gow's Wife had been much talked of and this Deponent believes her Character had been injured thereby'.

Dionis Charmbury and Hannah Gow were joined by their husbands in their suits against their defamers; Hannah Olding, the only woman to bring a criminal libel in the county in our period, named her husband and another male relative (probably her son or father-in-law) as the witnesses who would support her action.<sup>16</sup>

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<sup>16</sup>Q/SI 452 (Midsummer, 1832). The witnesses to the true bill were Henry Olding and Henry Olding, Jr. Debtors, or the wives of debtors, as we have shown, were vulnerable to the sexual advances of creditors; see also Quaife, Wanton Wenches, p.128. A common seduction scenario in eighteenth-century literature involved the imprisonment of the husband for debt by the seducer, who then advanced under the guise of helping the destitute wife.

Hannah, the wife of Henry Olding, a clockmaker of South Petherton, accused Samuel Vaux, a local yeoman, and Robert Lye, a schoolmaster, of libelling her by asserting that she had committed adultery with Robert Stower, a carpenter of the same parish. They did so artfully, in the following written libel:

Clockmakers...in Jail sure can't be disgraced  
 while Carpenters boldly at home fill their place,  
 at midnight or morning in Bed, or in Bower  
 A Man at my call will come from the Tower,  
 at home drunk or sober good humoured or bad,  
 his confidence plighted a true faithfull Lad,  
 from Whore to card table, card table to whore  
 in succession he ranges till the game is o'er-  
 Now how comfortable is debt,  
 my mate to Jail is gone,  
 his insolvency to get,  
 and I am left alone,  
 but I alone will not remain,  
 and sinful plans to feed,  
 my dearest friends I'll give them pain,  
 to satisfy my need  
 Which is a man,  
 a man with all his usual power  
 Send me one stranger if you can  
 I have him that's near the Tower...

Though written in 1831, the libel evokes themes that would have been equally familiar a hundred years before. Hannah Olding is depicted as sexually voracious -- particularly so once her sexuality has been awakened by marriage --and entirely indiscriminating. This view of married women (and the fact that the products of their illicit sexual activity could be masked) made them prime

targets for sexual advances in the seventeenth century; in that sense, and not because they were insatiable, it may not have been a good idea to leave them alone, whether by going off to prison or going off to work.<sup>17</sup> Finally, female adultery is described as a social crime, one whose implications extended beyond the individual or even the couple: 'my dearest friends I'll give them pain, to satisfy my need'. The view of wifely sexuality as insatiable and of wives as untrustworthy, slaves to their sexual needs, and willing to disrupt social harmony, is made explicit in this libel, but it underlay and justified the widespread interest in female adultery that brought defamation causes, far more cryptic in expression than this, to Wells.

The concern with conjugal reputation demonstrated by litigation over the fidelity of married women could also extend into the period before marriage. Thus, men remained vulnerable in their choice of a partner and a mismatch could provoke public comment and loss of reputation for the future husband. John Richards, James Day, Isaac Caller and Abraham Pyke were fined 1s. each at Assizes in 1796 for libelling Mary Bobbett 'by making and dressing up a certain effigy or Figure to represent Mary

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<sup>17</sup>Quaife, Wanton Wenches, Chap.5. He provides at least one example of a sailor who instructs his family to watch over his wife in his absence (p.125).

Bobbett spinster, now the wife of Thomas Chave and hanging up and exposing the same Effigy, to publick view, for twelve hours'. An indictment at Quarter Sessions the previous year described the incident in more detail.<sup>18</sup> Richards and Day, both yeomen of Creech St. Michael, five labourers (including Caller and Pyke), two thatchers and two wives and two daughters of yeomen, all but one from the same parish, gathered on 5 November 1795 at Creech St. Michael with 'Drums Trumpets Horns and other noisy instruments' where they made a great noise intending to 'molest and injure and to deprive of her good name and credit' one Mary Bobbett, spinster. They made and dressed an effigy of Bobbett and hung it on Richards's tree for twelve hours. The next day they returned, armed as before, to 'vilify the good Name Fame and Credit and reputation' of Mary Bobbett, this time hanging the effigy opposite her house. A true bill was returned against Richards, who appears to have been the ringleader; the witnesses included Bobbett but not her future husband. This charivari, while it may have been directed at some aspect of Mary Bobbett's behaviour unrelated to her marriage, looks as if it had been intended to demonstrate that Thomas Chave was about to make a bad choice in a wife. The marriage must have taken place sometime

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<sup>18</sup>ASSI 23/8/part 2 (Lent, 1796); Q/SI 415 (Wells, 1795).

between the two suits: Chave may have determined that this public abuse of his wife's reputation merited full legal redress once she had taken his name.

Although Quaife describes seventeenth-century Somerset as a cheerfully amoral place where the adultery of lower class women was 'common, if not widespread', his evidence paints a more sombre picture.<sup>19</sup> If the sexual activity of married men only became a problem when they failed to provide for their offspring or engaged in anti-social practices, such as violent lechery or rape, the extramarital activities of women were seen as nothing but a problem and wifely sexuality was subject to extensive regulation. Wives, unlike spinsters, (according to Quaife) were the targets of serious sexual harrassment that involved physical violence, threats, blackmail and bribery.<sup>20</sup> All too often what Quaife describes as adultery sounds like rape, a distinction ignored almost as frequently by husbands as by the historian. Domestic tranquility rested, in the seventeenth century as in our period, on having an unapproachable wife; a threat, a proposition or a rumour were enough to provoke a severe beating or even ejection from the house. In cases of actual adultery where husbands refused to act from fear

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<sup>19</sup>Quaife, Wanton Wenches, p.244.

<sup>20</sup>Ibid., pp.65;69;132.

or apathy, neighbours were willing to step in and restore order, either through public shaming rituals or by prosecuting the adulteress in the church courts. Feeling against female adultery ran strong enough to enable husbands to use false accusations of incontinence to put away their wives.<sup>21</sup> While some women may have taken advantage of the opportunities offered by fairs and markets, inns and alehouses, and forthrightly justified their adultery as the rational response to a sexually inadequate husband, most women stood to lose too much--a place to live, the means of survival, a good name--to indulge willingly in illicit sexual activity.<sup>22</sup>

Given the configuration of the law and court practise in our period, it would be a mistake to attempt any correlation between accusations of whoredom and the extent of female adultery in the county. Surely, though, the evidence suggests that threats to the sexual reputations of wives had powerful conjugal ramifications. If

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<sup>21</sup>Ibid., pp.138-39;162. For an example of community pressure to prosecute an adulteress and her lover, see Longman v. Holway, Hockey, D/D/Ca 397 (1786) and D/D/C (1786).

<sup>22</sup>Quaife, Wanton Wenches, pp.128-29;132. Quaife argues that where wives were economically indispensable to their husbands, as among the seventeenth-century Somerset peasantry, they had greater sexual freedom (p.181). This presupposes that attitudes towards sexuality were entirely determined by economic and material conditions, and that women could survive, if necessary, their husbands' animosity.



anything, the desire to avoid the taint of cuckoldry grew as men became careless of other aspects of their sexual reputations, aspects that, in the seventeenth century, had continued to attract notice and to lead to litigation. In that sense, male sexual reputation remained a vital issue, for it was the rare man who could divorce himself from the sexual sins, real or reported, of his wife.

### III. Public Men

When we come to examine the reputations of public men, we must rely almost entirely on the evidence of the common law courts. The church courts, the traditional forum for adjudicating any matters concerning church personnel, were deserted by ministers and churchwardens who relied, instead, on the justices to punish those who libelled them.<sup>23</sup> Only two defamation causes in our period were brought by parsons; two others name a Dissenting minister and a parson as sexual culprits. A

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<sup>23</sup>Churchwardens and clergymen were also frequently involved in assaults, either as aggressors or victims; and they were the victims of riots and arson. Clergymen were not infrequently charged with rape. The wives of churchwardens and clergymen may have been more likely to use the church courts. Walter Dalamore confessed to calling Anne, the wife of Benjamin Wingrove, a whore. Wingrove was a churchwarden of St. Michael in Bath and he simultaneously charged Dalamore with brawling in church: Wingrove and Wingrove v. Dalamore, D/D/Ca 420 (1741).

small number of parsons and churchwardens brought causes at Wells for 'quarreling chiding and brawling' in church, or were taken to court by parishioners for offences committed on church ground. The church courts continued to regulate this aspect of discipline and decorum, and provided a legal outlet for a handful of public (and private) men who had been insulted.

Men who brought libel causes at Quarter Sessions or Assizes in Somerset differed in several ways from the men and women who used the church courts to clear their reputations. (It is immediately obvious that while most public officials who felt that they had been libelled relied on the common law courts to fine or imprison their tormentors, their victims, such as Isabella Stroud and Mary Palmer, turned instead to the ecclesiastical courts, expecting no more than the performance of penance, the payment of costs and whatever inconvenience legal proceedings might cause their opponents.) While anyone was entitled to bring a civil suit for damages for slander or libel in the King's courts, public actions generally involved men acting in some public capacity. The libel laws weighed more heavily on those who denounced public men and such cases were more likely to find their way into the criminal courts as potential breaches of the peace. In Somerset, the men who brought criminal actions included a gaolkeeper, an M.P., several attornies

and medical men, a magistrate and the director of the Axbridge Circulating Library. The content of these libels is not primarily sexual. The one woman who brought such a libel in our period complained only of being accused of committing adultery; but male honour could be made or broken without allusion to sexual behaviour. More important were professional trust, honesty in business and in legal dealings and physical courage.<sup>24</sup> We will include a number of these libels to illustrate the breadth of the definition of male honour, and the small place sexual misbehaviour occupied within it.

Parsons probably did not figure as frequently as in former centuries in the defamatory accusations of their parishioners, but they were not free of the suspicion of sexual misconduct and parsons, such as John Skinner, who crossed their neighbours, were likely targets for verbal abuse. Their absence from the church courts reflects an unwillingness to pursue ecclesiasti-

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<sup>24</sup>Gold, 'The Showdown on Chamberlain Street', pp.52-55, illustrates the number of points of honour, none of them sexual, that could arise in a prolonged confrontation. The suit (probably for some form of assault, Gold does not say) moved from Quarter Sessions to King's Bench and the affidavits suggest that the dispute originated in a jovial accusation by Benjamin Pulsford, a local surgeon and midwife, that Barclay Cope, an Irishman resident in the city, was cheating at cards. It progressed to a challenge by Cope and Pulsford's refusal to fight, and culminated in a battle over who was to take the wall when they met each other on the street. It seems that Pulsford eventually established his precedence, and his superior honour, in court.

cal justice rather than any freedom from insult. Thomas Wickham, the rector of Shepton Mallet, was one of two clergymen to prosecute a parishioner for defamation in our period.<sup>25</sup> (There are many parallels between this cause and Hill v. Board, discussed above, but in that mid-nineteenth-century cause the parson did not engage directly in litigation.) William Isaac did not defame the parson to his face but, according to the libel,

[did] charge him with being a dishonest and lewd liver and that he had committed incontinence or adultery, and in this especially that speaking to or concerning Christian Cox the wife of William Cox the younger of Shepton Mallet...plaisterer and calling her a whore...Mr. Wickham's whore...And to signify that he particularly meant and intended...reverend Thomas Wickham he further added God damn the parson who minds the parson of the parish.

Isaac's anticlericalism cost him 10s. when he admitted his irreverent behaviour and the subsequent defamation suit cost him almost two pounds because he was tardy in confessing. He was assigned the only fully public penance for defamation in our period: on Sunday, 4 December 1763, William Isaac stood before the assembled congregation during divine service, confessed and promised not to repeat the 'false and scandalous' words. His certificate was signed by the officiating clergyman, Thomas Wickham. Wickham must have had quite a steely

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<sup>25</sup>Wickham v. Isaac, D/D/Ca 428 (1763) and D/D/C (1763). Three Wickhams were rectors of the parish between 1725 and 1847: Thomas, the second, served between 1757 and 1787: Farbrother, Shepton Mallet, pp.74-5.

nerve to bring off this piece of theatre to his advantage; certainly no other clergyman in our period was willing to risk it.

Nor was this the only penance Mr. Wickham witnessed in connection with Isaac's accusations.<sup>26</sup> On 31 July 1763, a penitential party consisting of Isaac and William and Catherine Hodges arrived at his house and acknowledged having called Christian Cox a whore. This may have been the first that the parson heard of his own misdeeds. Mrs. Cox won a total of 30s. in costs from these offenders, who had immediately confessed their offences. The final plaintiff involved in the cause, Mary Abbott, dropped her suit against the three defamers after issuing citations.<sup>27</sup> The number of people involved in the incident, and Isaac's irreverence, may have induced Wickham to prosecute.

It was not the parson, but an itinerant Dissenting minister who was linked with a married woman of Street almost sixty years later.<sup>28</sup> Unlike Parson Wait or Parson Wickham who played roles, direct or indirect, in the proceedings arising out of the incidents in which they were accused of committing adultery, Mr. Seabrook

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<sup>26</sup>Cox v. Hodges (William), Hodges (Catherine), Isaac, D/D/Ca 428 (1763) and D/D/C (1763).

<sup>27</sup>Abbott v. Isaac, Hodges, Hodges, D/D/C (1763).

<sup>28</sup>Sanday v. Haine, D/D/C (1821).

does not appear to have taken any part in the prosecution of John Haine. This may have been due to his religious persuasion (though Dissenters could use the church courts to defend their names), or to the fact that he had already left Glastonbury when the words were uttered.

James Down was sitting in his father's kitchen with his parents and their lodger, Captain Henry Hodge of the Royal Marines, when John Haine came into the room and began conversing with Captain Hodge

respecting a Mr. Seabrook a dissenting Minister who had lately left Glastonbury as some Gentlemen from Plymouth and Exeter or in that Neighbourhood were then in Glastonbury enquiring of Persons about Mr. Seabrook's Character that during such Conversation the Defendant Haine said that the Gentleman had been enquiring of him Seabrook's Character but that there was one thing which he had not informed them of which was that "Mrs. Sanday went on before to Exeter and then waited for Seabrook's arrival where they slept together in one Bed for two nights" and on Captain Hodges saying to Defendant you don't say that Defendant replied that "he did and he could prove it" the Conversation then ended and Mr. Haine...shortly left the House.

Esther Sanday, the wife of a plasterer and tiler of the adjacent parish of Street, brought suit a month later.<sup>29</sup> Whatever Haine's reason for withholding his information from the inquiring gentlemen, if indeed he

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<sup>29</sup>Glastonbury was a centre of Dissent and Quakers and Methodists, among others, was active in this period: Arthur L. Humphreys, Somersetshire Parishes. A Handbook of Historical Reference to all Places in the County, 2 vols. (London, 1905), I:334. This suit took place before the Clarks established their shoe firm in Street, but they formed the nucleus of a Quaker community prior to that time: Clark, Somerset Anthology, pp.ix,xix.

did he might have known that his gossip would pass quickly from the Downs, who had a 'farming business' and had lived in Glastonbury for more than thirty years. Haine's selection of an audience, Mrs. Sanday's quick recourse to the church courts and Mr. Seabrook's lack of participation in the suit suggest that Haine was simply aggravating Mrs. Sanday's adultery by naming Mr. Seabrook as her partner. Perhaps Dissenting ministers were as symbolic of evil to this group of neighbours as soldiers and colliers were to the farmers of Bathampton.

Two parsons were prosecuted at Wells for verbally abusing members of their congregations. Gerard Martin, Esq., claimed that immediately after the service on a Sunday in 1758, Francis Potter, the vicar of East Pennard, came up to his pew where he was 'devoutly attending to and performing divine service' and said 'he...was a litigious person that he kept or withheld from you your right and that if he...did not behave more like a gentleman you would take him by the nose'.<sup>30</sup> Women, too, occasionally made use of these suits. Katherine York was approached by John Theed, the rector of Charlinch, after a Friday service in Bridgewater parish church two years later. He reportedly said, 'I am glad to see you here. I am glad to see you at Church, I hope you have repented of your scandalous beha-

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<sup>30</sup>Martin v. Potter, D/D/C (1758).

viour. I hope you will not go about and scandalize and abuse your neighbours again'. Katherine York was sitting with the vicar's daughters and Philly Binford, the wife of William Binford, Esq. Mrs. Binford noted that the Rev. Mr. Theed was 'in a great tremor and seeming quite ruffled and discomposed', humming through the service. After he admonished York, Mrs. Binford rounded on him and said, 'do you think this is acting like a clergyman to attack a person in the Church'? to which Theed replied, 'the... Church is ye properest place in the world to attack a Lady in'.<sup>31</sup> Both Gerard Martin and Katherine Theed objected to the double humiliation of being denounced in church by clergymen.

Clergymen, churchwardens and overseers also brought causes against parishioners whose behaviour challenged their authority and interfered with the performance of their duties. William Lewis called Joseph Vernam, a churchwarden of St. Michael, Bath, a rogue at a vestry meeting in 1763 and made 'a very frivolous objection to the Account of the...Churchwardens for washing the Minister's surplice once a month, swore by your God that you would be damned if any such account shou'd be passed'.<sup>32</sup> Fortune Hutchings, a widow of Kingston near

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<sup>31</sup>York v. Theed, D/D/C (1760). Theed was suspended and ordered to pay costs.

<sup>32</sup>Vernam and Whittick v. Lewis, D/D/C (1763).



Crewkerne, quarrelled with Edward Manning, a blacksmith and Overseer, at the meeting he called to pass his account. She called him a 'timber scull'd dog' and he said 'What does thou do here you damned double Headed Bitch Get out of Church thou hast no business here'.<sup>33</sup> John Andrews, a carpenter, interrupted the service on a Sunday in 1786 by making such comments as '"That is true That is a lye"' and in the afternoon cried out during a burial '"The Parson have told two damned Lyes to day in the Pulpit"'. The rector of Street, the Rev. William Baily, claimed that his congregation threatened to stay away from church if Andrews was not punished, but some witnesses observed that Andrews had been serving liquor at the funeral and was so drunk that bystanders smiled at his interruptions.<sup>34</sup> The Rev. John Cope Westcote, curate of Fivehead, took his churchwarden to court in 1788 for breaking up a group who were singing psalms and learning psalmody by saying, 'Damn ye all you sons of whores what are you about here damn ye I'll have no such noises here'.<sup>35</sup> Another curate, the

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<sup>33</sup>Hutchings v. Manning, Manning v. Hutchings, D/D/C (1763).

<sup>34</sup>Baily v. Andrews, D/D/C (1786).

<sup>35</sup>Westcote v. Cozens, D/D/C (1788). Resistance to clergymen and their policies could be expressed non-verbally, and in the battles over the place of music in Anglican worship, the parish band often had its own means of retaliation. Causes involving parish musicians dot the court records. The minister of Huish, for example, presented a parishioner in 1843 for disturbing the service

Rev. Clement Tudway, took a parishioner to court in 1814 for insulting him during the annual distribution of alms left under a local will. Tudway was remonstrating with the churchwardens, Henry Joyce and James Foster, for charging 1d. for tickets that entitled paupers to a share of the money when John Joyce walked up and declared he had no right to be there. When Tudway disagreed, Joyce replied, '"If you were not a Gentleman I should tell you you told a Lie"'. Tudway explained that he came as 'the Guardian and friend of the Poor, and to take care of their Interest', but Joyce dismissed this claim. '"The People are much mistaken if they think so, you are only endeavouring to excite Disturbances and Dissensions in the parish, you have nothing to do with them except in the Pulpit or Desk"'.<sup>36</sup>

Acceptable behaviour in church, the province of clergymen and churchwardens, and the proper role of a clergyman, as articulated by parishioners, did not always

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'by singing and playing instruments in an irreverent indecent and improper manner' and then leaving noisily in the middle: *Kenslowe v. Sawtell*, D/D/Ca 474 (1843) (A.W.).

<sup>36</sup>*Tudway v. Joyce*, D/D/C (1814). The money had been left under a will for thirty poor people, nominated by the rector, 'who have or shall have lived by their honest Labour'. Anthony Trollope describes the predicament of Lucy Morris who runs up against the gentlemanly horror of 'giving the lie' and exacerbates her sin by contradicting a person of a different gender and social class: *The Eustace Diamonds*, *The World's Classics* (Oxford and New York: Oxford University Press, 1983).

jibe. These suits are evidence of the friction that could develop between ministers and their flocks over the balance between clerical and lay power; friction that increased when ambiguities, whether of social status (the theme of gentlemanly conduct runs through several causes) or official standing (curates were disproportionately victimised) obscured a clergyman's position in local society. Gerard Martin and Katherine York, by prosecuting clergymen, and Philly Binford and John Joyce, by their actions and statements, suggest that clergymen were not beyond lay supervision and control and therefore that the words of clergymen could be interpreted, not as divinely inspired advice, but as personal insults upon which litigation could be founded. The reputation of clergymen could be governed by the same mundane considerations as those of other men.

Ministers were the recipients of slanders and libels as well as of the occasional defamatory outpourings of their flocks. Two ministers were libelled in their non-religious capacities: one as a magistrate and the other as a tax commissioner. William Darby, a Dissenting Teacher at Taunton, was libelled by James Walker, a Martock yeoman, who accused him to cheating in his property dealings. A group of Bridgewater artisans published two lengthy libels accusing the Rev. Richard Jenkins Runwa Jenkins, preacher and reader at Bridgewater as well

as rector of Axbridge, of misappropriating funds. The Rev. Edmund Gardiner, vicar of Wellow, endured the repeated verbal abuse of his parish clerk before he prosecuted. When Gardiner attempted to retrieve the church keys from the clerk, he was called such names as 'Clap Doctor'; his burials were interrupted with similar jeers; and once the clerk called after him in church, 'Damn him - he jurdles like a Great Bear with a Sore Arse'. These insults may not have been explicit enough to support a defamation suit, despite their sexual undertone, and Gardiner may have been more interested in seeing his nemesis under lock and key than performing penance in his vestry. Ministers were also the authors of libels. John Hawkes Moles, a clerk of Ilminster, published a letter libelling one of his parishioners, Vincent Langworthy. Langworthy, a gentleman, and his wife were implicated in a feud over church seating and accused of failing to attend church.<sup>37</sup>

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<sup>37</sup>John Hooper, a gentleman of Gregory Stoke, uttered 'wicked and Scandalous words' to James Uttermare, clerk, a J.P. executing his office: ASSI 23/7 (Winter, 1766 and Lent, 1767). Robert Cozens, a winnowing-machine maker of Fivehead, libelled the Rev. William Palmer, Commissioner for Taxes at Ilminster, by sending him a letter offering a reduced rate on one of his machines for his consideration in a tax appeal: ASSI 24/44 (Lent, 1809 and Summer, 1810) and ASSI 23/9 (Lent, 1812). Darby: ASSI 25/19/22 (Summer, 1826). Jenkins: Q/SI 428 (Wells, 1808). Jenkins was a pluralist. In 1791, he held the lectureship of Bridgewater and the four curacies of Do dington, Fiddington, Otterhampton and Stringston: Kemm, 'Church of England', p.152. Gardiner: Q/SR 364 (Wells, 1796): Information. Langworthy: Q/SI 427 (Wells II, 1807).

Churchwardens, too, came in for abuse. Edward Henry Minchington, a gentleman of Mudford, wrote a letter to the bishop detailing the uncharitable conduct of Oliver Hayward, a gentleman of the same parish, and found himself with a libel suit on his hands. Hayward, a churchwarden, was said to have mistreated the poor parish clerk, Jonathan Hodges, particularly by usurping his duties and the accompanying fees. James Dunn, a common brewer of Walcot, found himself in similar trouble after alerting the Archdeacon of Bath to the misconduct of both churchwardens in the parish.<sup>38</sup> His letter read:

I...have been inform'd you...are going to bring one criminal before the Publick I...hope you...will upon the receipt of this bring two more viz your Churchwardens (one) y...rs...for seducing two Sisters the Daughters of once a respectable Farmer on Landsdown which broigh (meaning brought) them to the greatest reduced state of poverty misery and affliction The other...for having a child by his Servant maid and sending her into the Country to prevent the parish officer from knowing the Father Your impartial judgement upon them...and after the investigation it will be expected in the papers (newspapers)...to gratify the publick and which will oblige a well-wisher to even handed Justice and good order, yours obediently,  
A Parishioner

Both Minchington and Dunn objected to their churchwardens for taking advantage of the poor and unprotected. At the very least, they thought that the theme of charity

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<sup>38</sup>Hayward: Q/SI 438 (Easter, 1818). Daniel Howe, woollen draper, and Charles Geary, gentleman, churchwardens of Walcot, prosecuted James Dunn, common brewer, of the same parish: Q/SI 451 (Epiphany, 1831). Howe had been appointed by Charles Abel Moysey, D.D., Archdeacon of Bath and rector of Walcot. Geary had been appointed by the parishioners.

betrayed would prove affecting to the bishop and the archdeacon.

Physicians, who held positions of trust not unlike those of parsons, with frequent access to the homes of their patients, could be condemned for violating this trust. Francis Bush, a surgeon and apothecary of Frome, suffered the insults of Charles Oldfield, a woolstapler of the same parish, for at least two years before initiating a libel suit.<sup>39</sup> Bush was accused of charging for visits he never made and seducing his patient, Oldfield's wife. Oldfield had employed Bush on a retainer to heal and cure his wife and himself. When Bush sent in a bill for medical and surgical attendance and medicine in May 1827, Oldfield returned it with these words on the back:

NB your...villainous person never was in my...house 25 times (except in my...absence and for the purposes of seduction) during the time of my...living in Catharine St. Francis Bush Accountable to C. Oldfield For having villainously and perfidiously seduced and debauched Deborah Oldfield wife of C. Oldfield

Oldfield did not stop at these words, but resorted to violence and public humiliation in his campaign against Bush. Besides assaulting him, he publicly confronted him more than once and uttered 'opprobrious and offensive words' to provoke Bush to break the peace. Such public accusations could be serious for a professional man, and Bush attempted to reclaim his

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<sup>39</sup>Q/SI 449 (Easter, 1829).

reputation at Quarter Sessions. Though convicted, Oldfield's guilty verdict was respited and he was fined 1s. by consent and discharged having entered into recognisances.<sup>40</sup>

Charity betrayed was again the theme in the letter written by Edward Spencer, a Wells surgeon, concerning the character of Charles William Taylor, of Liphook in Bramshot, Southampton, Esq., late M.P. for the City of Wells.<sup>41</sup> Spencer thought that Taylor was unfit to serve another term, and he outlined his faults in a letter addressed to the Freemen of Wells. He begins by alluding to Taylor's 'Birth parentage and education' and goes on to accuse him of trading property for votes and destroying the innocent amusements of the town by turning an Assembly Room into 'a Brewery and Pigsties' and applying the profit 'to the Support of Opera Dancers and Demireps'. Taylor had reneged on his promise to move to the neighbourhood, thus depriving the freemen of his hospitality and his liquor, and instead visited his constituency once a year 'and sometimes divided that day between the Corporation and a Lady'. Finally, Taylor had

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<sup>40</sup>Q/SI 449 (Easter, 1829; Midsummer, 1829; Michaelmas, 1829). Bush simultaneously sued William Barter, a brewer.

<sup>41</sup>Q/SI 422 (Bridgewater, 1802) and ASSI 24/43 (Lent, 1803). Both times the cause was removed to higher courts.

doubled his tithes and rents at a time of great want, 'grinding the faces of the poor purposely to support his Ricketty profligacy'. 'John Bull' ended his letter by characterising Taylor as 'a convicted Adulterer - a notorious Gambler' and denouncing his candidacy as an affront to the morality and the integrity of the freemen.

Anthony Thomas, described as a gentleman of Wedmore, was similarly subjected to a thorough indictment stretching back even before his birth.<sup>42</sup> The catalogue compiled by Benjamin Tyley Hancock, a labourer of the same parish, and presented in the venerable form of a final confession before the gallows, was printed on a paper with a picture of a man hanging on the public scaffold:

"The Last Words Dying Speech and confession of Tom the Devil, alias Turnpike Tom, alias Leg of Mutton Tom...A True and Impartial Account of this unhappy wretch... two hours before his Execution. The Ordinary, Sheriff and other Gentlemen went in to prepare him for the awful Change, when he made the following confession ...'I was born at Cowbridge, in South Wales, but as to the meanness of my parentage and the obscurity of my birth I will say but little; suffice it to say, they are that which upon investigation, will prove them to be poverty, roguery, dishonesty, thievery...and all which I so naturally and eagerly imbibed that I have strictly followed them ever since I left my paternal hovel...In the year 1775 I was apprenticed to the business of mending old horse collars and harness (and not to the making as has been reported by some);--and in that humble capacity I came over to England, with my tinker-like pack at my back, doing trifling jobs at peoples doors...by which, together with paying repeated visits to the fowl roosts for some Time

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<sup>42</sup>Q/SI 445 (Michaelmas, 1825).



gained a tolerable livelihood....In the year 1785, I came to Blagdon, in Somersetshire, in company with two gypsies, where we kidnapped, carried off and sold two poor friendless children...I then commenced public informer and thief taker...by the profits arising from these employments, I was enabled to take a turnpike-gate, which I conducted with all the knavery I was master of--cheating the commissioners, false weighing of waggons, etc....Having saved up a tolerable sum, I raised myself to the post of Tythe Proctor, under the employ of my countryman; and him I must say I served in a most wicked manner--for I not only fattened my pigs with his best wheat, my geese and other poultry with his beans, but I filched enough for my Domestic consumption, and a few sucks for sale into the bargain,--besides over-reaching him in different ways, which for brevity sake I must forbear to mention ...Times out of number have I taken the advantage of my neighbours, and cheated Mr. R\*\*\*\*out of his tythe for teazels...Many times have I forsworn myself, and compelled those by bribery who were in my employ, to assist me in my false accusations...Once did I falsely swear and unjustly send to prison John Harvey, a pauper...Once did I avariciously, greedily and feloniously rob Geo. Sullow of half-a-crown given him by a Gentleman of Bath...Once did I act unhumanely and shamefully base by compelling my servant maid Mary to swear false against John Fuller and Richard Rendall, for which I gave her a new gown...I have for years past, and do now when I wish to satisfy my carnal appetite commit adultery with my own niece...Once did I compel my servant Mary and my two nieces under threats of my greatest displeasure to perjure themselves and swear false against Wm. Wyett and W. Petheram...Oft times have been made a public example, and have been exposed to the ridicule of the world by their sticking up placards not much to my credit...In fact, since I came over to England, I have been every thing but an honest man, for which I am named "Tom the Devil"...I burnt and destroyed Mrs. D\_\_\_\_'s will, to the intent that I might inherit her property...'By this time the executioner was arrived to inform him the time was up for making his appearance on the scaffold, which seemed to distress him so much, that he was indebted to one of the bystanders for his assistance to help him to ascend the drop. While the hangman was performing the usual ceremonies of pinioning him, adjusting the rope etc. he was heard to beg heartily for forgiveness for the crime of perjury in a law suit with old farmer P\_\_\_\_...In a few minutes he was launched into eternity...to receive his just

reward for a life spent in the most abominable wickedness of every description...."

Everything about Thomas's life is low and mean, from his birth and parentage, to his first trade, to his manner of employing himself in England. (This last was explained in the indictment as meaning that he 'had travelled like a tinker and worked in a very inferior capacity'). When Thomas was not carrying on his distasteful trades, he was breaking the law - stealing and selling orphans - or abetting it in the most devious of ways, as an informer and thieftaker. He carried these dishonest habits into two very unpopular occupations, as turnpike gatekeeper and tithe proctor. In both jobs Thomas managed to cheat his patrons as well as his victims. (It is possible that Thomas never held these offices, but that they were included in the libel for their symbolic value). Again, Thomas is guilty of oppressing the poor, by extracting inflated tolls or tithes, or by stealing from or having them imprisoned. His final enormity, the destruction of a will, is committed to increase his property.

Thomas's sexual transgressions form a very small part of this libel; indeed, his sexual appetite appears to have been subordinate to his greed. His adultery with his niece, which is not described as incestuous in the commentary on the libel, was again of the familiar type:

Thomas was taking advantage of a dependant. For Edward Spencer, Charles Taylor's immorality was equally heterogeneous. His adulteries were as reprehensible as his oppression of the poor or his disdain for the traditional perquisites of the Corporation and they became noteworthy because they were carried on at the expence of the town and the Corporation.

Drawings and counterfeit public notices were another popular means of advertising an offender's misdeeds, and neither they nor written libels were directed exclusively at officials. Like the 'final confession' of Anthony Thomas, these literary efforts were explicit about crimes and transgressions. Henry Upsham the younger, a bankers clerk, was indicted for libelling Richard Turle, also of Taunton, a grocer. He had, on 17 September 1817, chalked on a wall in a public street a man hanging from the gallows inscribed '"Turle Grocer" and "Damnation cease Turle an informing Rogue hang him"'. John Clarke the younger, a weaver of Stoke sub Hambdon, posted a bill at a pub stating that John Cosins would sell himself as an evidence at reasonable rates. In another Taunton case, James and Robert Dyke, who had been tried for a felony, published a painted paper purportedly written by the jurymen at their trial claiming that Henry England, the chief evidence, had confessed to perjury and committing the crime himself as

well as turning over the stolen goods to his mother, Hannah. Samuel Wheeler, a Frome labourer, was charged with libel after publishing two notices offering £50 for the apprehension of George Messiter, a suspicious character and assassin with goggle eyes and a stiletto concealed in his sleeve.<sup>43</sup>

When libellers wished to convey that the characters of men such as these described above were exceptionable, they could choose among a wide range of evils, of which the sexual formed only one part. The sexual misbehaviour described in the libels was of a particular kind; libellers objected less to the sexual acts themselves than to the choice of partners. They condemned the liberty of rich men to take advantage of their female dependants just as they chastised the same men for grinding the poor or ignoring other traditional obligations. If the language of defamation in this period increasingly decried the loss of wifely fidelity, the language of libel lamented the suspension of male charity. While the condemnation of female sexual misbehaviour remained a social constant, both prior to and beyond our period, libellers resorted to a traditional vocabulary and a set of traditional (and increasingly

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<sup>43</sup>Turle: Q/SI 437 (Michaelmas, 1817); Cosins: Q/SI 458 (1738); England: Q/SI 417 (Bridgewater, 1797); Messiter: Q/SI 440 (Easter, 1820).

anachronistic) values when criticising men. The vision of society conjured up in these libels is not one that is free of illicit sexual activity, but it is one in which the behaviour of powerful men is circumscribed by a sense of honour that forbade the oppression of the weak, just as it obviated legal or financial chicanery, cowardice, or the betrayal of one's friends.

#### IV. Shaming and Blackmail

While the techniques employed in shaming rituals and blackmail are diametrically opposed, one exploiting public humiliation and the other thriving on secrecy, they are both concerned with reputation and their traces in the legal records point to weak spots in the facade of male rectitude. The charivari and the skimmington were traditionally associated with sexual, marital and familial disturbances, and when we read of effigies or banging pots we may suspect misbehaviour of this order. Other marginally violent acts, because of their scatological content and the premeditation necessary to their execution, must have also been read by contemporary observers as judgements upon their recipients rather than, as the formulae of the law would have us believe, reflections on the characters of the aggressors. In either case, public correction, whether administered by an individual or group, calls attention to unacceptable behaviour and

utilises shame to reform it. Blackmail, on the other hand, bears an uncomfortable resemblance to some forms of libel and the methods employed by libellers and blackmailers are often indistinguishable. In blackmail the motivation may be assumed to be mercenary rather than regulatory; the goal disruption rather than harmony. Personal abhorrence of the crimes is of little importance. Blackmail is founded less on a vision of a perfect society than on a vision of a hazardous one, and it is its exploitation of these hazards that allows us to further define male reputation.

Instances in which men were the targets of charivari and riot find their way more frequently into the legal records of Somerset than do those involving women. Riots against churchwardens, bailiffs or other parish officials are at least superficially explicable; equally so are the riots of weavers against their masters that rocked the cloth towns of Somerset in the first half of the eighteenth century.<sup>44</sup> We know very little, however, about the few cases where riots are described as injurious to reputation beyond, perhaps, their geographical and temporal location and the occupations of some of the participants. The legal record reveals nothing of

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<sup>44</sup>For weavers' riots, see Rule, Experience of Labour, pp.159-164;172;183;187. The weavers, who had organised themselves into clubs, extended their activities into the early nineteenth century.

the misbehaviour that provoked the demonstrations or of the characters of the victims.<sup>45</sup>

The case of Mary Bobbett and her future husband has already been mentioned. While that shaming ritual may reasonably be assumed to have focussed on sexual and marital matters, the examples that follow are more ambiguous. In 1756 a sheergrinder, a butcher and two labourers, along with unnamed others, were indicted for riotously assembled in their parish of Combe St. Nicholas where they 'did use and exercise a certain unlawful Practice and Contrivance called Skimmington for the space of half an Hour'.<sup>46</sup> A crowd that included four labourers and a spinster was charged with depriving William Beale of 'his good name fame and Credit' and bringing him 'to the greatest hatred Scandal Contempt and infamy' by parading his effigy around South Petherton on the evening of 15 December 1810. After exposing the effigy opposite Beale's house for fifteen minutes

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<sup>45</sup>Quaife has found few skimmingtons in his period, and concludes that they had lost much of their traditional meaning even then: Wanton Wenches, p.200. This may account, in some part, for the haziness of the legal evidence in our period, but it is also likely that traditional meanings apparent to plebeian participants and bystanders were lost to or purposely ignored by those responsible for maintaining order. Bettey, Wessex, pp.101-2 claims that the skimmington persisted into the twentieth century in the West Country.

<sup>46</sup>Q/SI 376 (Bruton, 1756) and Q/SR 324 (Bridgewater, 1756). The named offenders were fined 3s. 4d. each.

and breaking his windows, the crowd burnt the effigy.<sup>47</sup> Edward Henry Minchington, who resided with William Pitcher and his family in Mudford, did something to provoke an angry mob of more than fifty people to riot around Pitcher's house for twenty-four hours in February 1818. Of the fourteen men identified in the indictment, one was a farmer, one an innkeeper, four were cordwainers, one a blacksmith and the rest were labourers. They erected a 'gibbet upon certain Tucks and did hang and affix to the sd Gibbet a certain figure resembling a Man and with the sd Figure suspended from the sd Gibbet did...pass and repass up and down the Public and common Highway near to and about' Pitcher's house; shot off a gun; and threw dirt, gravel and stones against the house.<sup>48</sup> The chronology of Minchington's problems--the libel suit described above and this popular outburst were prosecuted at the same Sessions--is uncertain, but there must have been more to his interference in parish affairs in 1818 than his championing of a poor parish clerk

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<sup>47</sup>Q/SI 430 (Wells, 1810).

<sup>48</sup>ASSI 25/14/4; 23/10 (Summer, 1818). All were dismissed without prosecution. A true bill was found at an earlier point: Q/SI 438 (Easter, 1818). Witnesses included Minchington, James Buss and Joseph Whitcombe. Mudford had a population of 375 in 1821. These few cases do not point to any relationship between parish size and the occurrence of popular disciplinary actions: Combe St. Nicholas had a population of 870 (1801); South Petherton housed 1867 (1811); Goathurst had only 341 residents (1841); and Chard was a town of 5788 (1841).



against a rich churchwarden. Seven labourers, a cord-wainer and at least twelve others gathered outside James Slade's house in Goathurst on 16 January 1841 with 'sticks, Pans, Kettles Horns and Bells' where they made 'great and unusual Noises' for twelve hours. Their ire was directed at Slade and at Edward Coombes the younger, who was in the same house.<sup>49</sup> James Hill of Chard watched a crowd of over 300 exhibit and burn his effigy before they threw it, flaming, against his door on 30 March 1843. Again, only men were indicted, and all of them were labourers.<sup>50</sup>

Not all incidents involving effigies and public displays led to legal proceedings. Richard Locke, the agricultural improver, boasted of being stoned and beaten by the mob in the course of promoting enclosure in the county; the geese-owning commoners of the Wedmore area burnt him in effigy for proposing to enclose and reclaim the moors.<sup>51</sup> A dispute between the churchwarden of Chew Magna and the parish singers led to a brawl in the church. Mr. Marsh, the churchwarden, was insulted, libelled and burnt in effigy by the irate singers, who

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<sup>49</sup>Q/SI 461 (Spring, 1841).

<sup>50</sup>Q/SI 463 (Spring, 1843).

<sup>51</sup>Locke, Supplement to Collinson, p.14; Williams, Somerset Levels, p.125.

were subsequently forced, by the vestry, to confess publicly to their crimes.<sup>52</sup>

A final group of incidents lack both context and motivation, but bear the marks of premeditation public humiliation inflicted on individuals who had transgressed. We do not know why two Wrington blacksmiths threw 'great Quantitys of Earth Dung filth and nastiness' against the house of John Lovell, but the fact that women were frequently and more personally concerned in such attacks suggests that they were interpreted by bystanders and neighbours as comments on behaviour.<sup>53</sup> Mary Pavier, the wife of a Middlezoy yeoman, did 'throw cast and pour' 'two Quarts of Urine Six pounds weight of

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<sup>52</sup>Wood, Chew Magna, pp.249-50.

<sup>53</sup>Q/SI 395 (Wells, 1775). When Win Jenkins and a manservant walked home from a theatre in Newcastle dressed in the latest Paris fashion, they were hissed and hooted by the natives and Win was 'bespattered with dirt, as well as insulted with the opprobrious name of painted Jezabel': Smollett, Humphry Clinker, pp.245; 256. That Win was called a whore for wearing fine clothes may have been as much a comment on what could have been seen as an attempt to violate class boundaries, as on the accepted meaning of female display. A woman's appearance, and the public destruction of it, are sufficiently bound up with sexuality to enable us to read some of these incidents in terms of reputation. For instance, Arthur White and John Eades, labourers, and George Hallett, butcher, all of Street, were indicted for assault and riot (along with fifty unnamed assistants) in 1835 for beating Diana Maclean, throwing her into a ditch full of 'mud filth dirt and water', pouring water over her, rubbing 'upon and over the face of...Diana Maclean a quantity of black substance' and then throwing a 'heap of Dung Straw mud and filth' over her: Q/SI 455 (Michaelmas, 1835).

Ordure and a large quantity of other filth and unodiferous and stinking nastiness' on Amy Perralt and did thus 'bedaube bescummer besmear damage and injure' Perralt and her clothes.<sup>54</sup> Pavier was described as having a 'turbulent fractious and malevolent disposition', but similar words were used in the indictments of those who took part in charivari.

Blackmail involved a judgement about what might injure a man's reputation, though blackmailers differentiated between crimes that would attract universal censure and those that might be of interest to no more than a few individuals. Heterosexual misbehaviour, even the alleged fathering of bastards, might fall within the latter category; failing to stand by one's word of honour or neglecting other gentlemanly responsibilities often had more public implications. John Pullin, a breeches-maker of Bristol, was taken to court in 1783 by a

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<sup>54</sup>Q/SI 393 (Wells, 1773). See also ASSI 23/8/pt.2 (Lent, 1794) for a similar assault by George Phelps upon Margaret Bradford; Q/SI 388 (Bridgewater, 1768) for an attack by Mary Jennings, widow, upon Joseph Baker; and Q/SI 389 (Bridgewater, 1769) for an attack by Elizabeth the wife of Willoughby Stambury, clerk, and Ann Furze, spinster, both of Bridgewater, against John Hembury. These are no more than a selection. Rules of propriety may also have extended to certain animals: John Butler and Daniel Townlate, labourers of Chard, and John Pinney, a yeoman of Thornfalcon, were described as persons of 'depraved and indecent' dispositions because they did 'leave have and publicly and indecently expose to view a certain high fed wanton Lascivious unruly and unfettered stallion': Q/SI 400 (Bruton, 1780).

Bridgewater brazier, Thomas Pyke, who accused Pullin of libelling him by writing out an affidavit that damaged his business credit. Pullin, relying on Pyke's brother's 'word of honour', had backed a bill of Pyke's which subsequently fell due.<sup>55</sup> A captain of the same city placed an advertisement in a local paper in 1768 offering a reward leading to the identification of the author of a rumour that he had murdered his slave and had a surgeon dissect him. He had already exhibited his slave in public to show that he was alive and in one piece.<sup>56</sup>

It was probably difficult to communicate privately about some matters with a wealthy man, as Joseph Emery did, without raising the spectre of blackmail and leaving oneself open to a libel prosecution. Emery, a Wells druggist, was charged with libelling George Bartlett after sending the following unsigned letter, in August 1830, to John Hoare, Bartlett's brother-in-law and a member of an eminent local family:

I am really surprised to hear the many complaints and murmurings I hear from all quarters about the Tyranny cruelty ill usage of your...Sister Miss Hoar...who to Justify the ill treatment practised upon her...is said to be insane If that she...is so afflicted to be followed at every step and by a great fellow from Bristol named Maggs and two small wenches besides the Tyrant himself (meaning George Bartlett) who upon every wim and I am shure without a cause illegally imprisons one of his Majesties Lege subjects...and who is so now

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<sup>55</sup>Q/SI 403 (Taunton, 1783) and ASSI 23/8/pt.2 (Summer, 1785).

<sup>56</sup>Latimer, Annals, p.384.

imprisoned for days and weeks without proper necessarys without form or trial is a high offence against the Laws of this Relm Shurely the Son...of the late respected Mr. Hoare...do not know or is imposed upon by flattery or Interest to suffer an unfortunate Sister...to be ceep in worse than Egiptian Bondage for no other reason in the world but to ceep a Man (meaning...George Bartlett) in idleness with Dogs and Gun instead of following his...honest trade to such a height is Tyranny and consequently fear carried on that to an answer from Miss Hoar...to a friend how are you Miss Hoare...I...am verry well I...thank you Mr. Bartlett...is very good to me I...must tell every body so she (meaning...Elizabeth Hoare) is now a prisoner her...usage is shameful for the commonest outcast in this world written by a friend to the oppressed an inhabitant of Chamberlain Street.

Professional responsibility or civic duty rather than financial gain may have prompted Emery to write, and he certainly takes the disinterested rhetorical stance of many men accused of libel, but it is likely that both Bartlett and Emery were less concerned with Barlett's inhumanity than with his theft of his sister-in-law's property.<sup>57</sup>

Men were willing, or initially thought willing, to pay money to suppress information about a rather limited range of heterosexual misbehaviour; in most cases the

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<sup>57</sup>Q/SI 450 (Epiphany, 1830). Emery was acquitted when Bartlett failed to prosecute. He and his wife, however, were involved in extensive litigation that year. Elizabeth More Emery took Susannah Hill to Wells Court in November for calling her a whore. Mrs. Hill eventually made a direct apology to Mrs. Emery, paying the costs at the same time: Emery v. Hill, D/D/Ca 452 (1830) and D/D/C (1830). The church court action followed a series of assault indictments at Quarter Sessions beginning in January 1830 and pitting Emery and a relation, George Moon Emery, against the Hills and four other Wells labourers: Q/SI 450 (Epiphany, Easter, Michaelmas, 1830).

adultery or fornication of the victims was aggravated by circumstances (financial misdeeds, an impending marriage, the birth of a bastard) that made for more successful blackmail. John Willcocks, a Taunton innkeeper, was indicted for libel in 1841 after publishing a letter to Joseph Davey, a malster and brewer of the same town.<sup>58</sup> Dated 28 June 1841, the letter noted that Davey had owed Willcocks 13s. since 13 March 1837 and went on to suggest reasons why Davey should pay up immediately:

after paying you...many thousands pounds please to show me a just cause why you will not pay the above debt...I...hope its not dishonesty prevents you...if its poverty and you will own it to me I will forgive you the debt if you do not like to pay me in cash I will take it out in Coal in order to make it convenient to you. But it would have been better for you to pay me the thirteen shillings then to let your self down so low for your name to be posted about the town ... [i.e., posted as a dishonest person] Mr. Davey ...why did you tell my Wife...about your Whore and Bastard... when she...came home and told me that you had told her...of it...I was very surprised because I had kept it a secret for so many years the more to my shame its one of the dirtiest tricks ever I was guilty of Mr. Davey I hope you will take my advice and pay the little bill off...and let me say no more about it for those little shuffling tricks be no good to you - I have a great deal more to say to you but I shall [be] discret till next opportunity--I remain honest.

Dishonesty in both financial and sexual matters and related unfair dealings with Willcocks, by refusing to pay his debt and by disclosing a secret to his wife, are the main charges against Davey. Willcocks intimates that Davey had avoided repayment by blackmailing him over 'one

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<sup>58</sup>Q/SI 461 (Michaelmas, 1841).

of the dirtiest tricks ever I was guilty of' (perhaps he had helped Davey screen his 'Whore and Bastard' from the authorities or from his family).<sup>59</sup> The mere existence of these irregular relations may have made Davey vulnerable to counter-attack, or perhaps Willcocks intended in turn to implicate him in the dirty trick.

Jasper Porter, a yeoman of Lyng, took William Morris, also a yeoman, to court for trying to 'destroy his domestic peace and happiness in his family'.<sup>60</sup> At issue was a document, dated 3 June 1835, which was intended to show that Porter had recently been incontinent with Rachel Brewer at Lyng and which Morris made public less than two weeks later:

I Jasp. Porter...Promist...to pay to Mr. Wm Morris of Lyng, £1 for keeping secret my cariter...if he sas (meaning says) nothing about R. Brewer...about in on or before the 5 day of July next Jasp. Porter...promes ...Payment.

The indictment was witnessed by Porter, John Curtis, and two members of the Brewer family, Joan and John. Most intriguing is the assumption that Porter's incontinence would detract from his character. One may only speculate

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<sup>59</sup>Quaife, Wanton Wenches, p.163, provides examples of extortion based on the accusation of adultery with married women; extortionists would threaten to tell the woman's husband. False accusations of male sexual misconduct probably carried more weight in the seventeenth century and could be used to extort money or force the payment of a debt. Quaife also suggests that the charge of rape could damage a man's character (p.173).

<sup>60</sup>Q/SI 455 (Midsummer, 1835).

as to whether the prospects that may have been blighted by the exposure of this illicit activity included a marriage that was to take place on the date in the note, 5 July.

False prosecutions were an effective means of slandering an enemy and simultaneously saddling him with heavy legal expences and occasionally these prosecutions had a sexual dimension. Association with the sex trade, at least in the eighteenth century, could adversely affect the reputation of an innkeeper or a publican. Two excise officers, a blacksmith and an innholder were charged with conspiring to deprive Thomas Symes, a Bridgewater innholder, of his good name, credit and reputation by fabricating a case against him for keeping a disorderly house and acting as a pawnbroker.<sup>61</sup> They purportedly offered Robert Wilson £5 to go to Symes's house with 'some lewd woman' and to borrow 2s. for a pair of silver buckles, after which he was to appear before a justice of the peace to make an information against Symes.

Whereas illicit heterosexual activity rarely resulted in blackmail that was subsequently prosecuted in court, the birth of a bastard necessitated the location of a father to support the child and therefore created

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<sup>61</sup>Q/SI 389 (Bridgewater, 1769). Robert Wilson was the sole witness, and the jury found no bill.



opportunities for both extortion and false attributions of paternity. While in the seventeenth century these false accusations were often described, in legal documents, as injuries to the innocent man's character, in our period the burden was seen in financial terms.<sup>62</sup>

Louisa Coggan, a spinster of Somerton, was convicted for sending the following threatening letter to Samuel Hassell of 'Littlen' dated 26 December 1841:<sup>63</sup>

Sir - I have taken the liberty of writing to you again to inform [you] that I was taken up on Weds. last before the Magistrates to be examined for the father of the Child, but I do not wish to expose your name I have been in the family way for 3 Children befor and have troublesome each time and the gourdians is very particular of knowing the father of this Child for to take it in hand betime threfore sir i wish to know your determination as the time is short befor i must appear before Mr. Welsh to be tried again, you know sir that you have gave me some Money before and i have sufficient witnes to prove it and as you promised to give me some more you may as well give it to me first as last and if you will give me six Sovereigns i will not expose your name let the guardians do what they will with me, as they are determined that I shall appear before Mr. Welsh on Thursday next, I did not come myself as I thought the people would think the more of it, but i have this woman whom i can trust as though twas my ownself so that if you are inclined to send to me please to send it in a small parsel by the bearer who will deliver it to me, but if you do not send i must exposes your name, but if you do not like to send by the bearer if you please to meet me tomorrow night and tell the bearer where i am

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<sup>62</sup>For the seventeenth century, see Quaife, Wanton Wenches, pp.108;111. In one case a petition to the court on behalf of a man accused of fathering a bastard explains that the accusation amounted to defamation of an honest man.

<sup>63</sup>Q/SI 462 (Spring, 1842).

to come, by your giving me the money before will prove that you are the father of the Child...

So no more at present from - Louisa Coggan

Coggan, if she wrote this herself, exhibits an usual command of the language and the law. No doubt others in her position had to deliver their threats orally, and with less hope of a return. One would like to know whether the jury had to consider Mr. Hasell's possible guilt as well as Coggan's lengthy record of bastard-bearing before returning a verdict. A female prisoner who had borne bastards was called of necessity as a witness by Henry Hunt at the inquiry into Ilchester goal, and was easily discredited by the defence: '"The jury knew, as well as he, that when the bloom was taken off the honesty and integrity of such a woman, she lost some of her best feelings, and her testimony must be received in a different light from that of a person who had not forfeited her honest character"'. Hunt, in turn, characterised the witnesses for the defence as strumpets and bum bailiffs.<sup>64</sup>

More common was the practise of swearing a bastard to the wrong man. Some women did this in order to

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<sup>64</sup>Henry Hunt, 'To the Radical Reformers, Male and Female, of England, Ireland, and Scotland', 41 (24 August 1822):14. Mary Cuer, committed for stealing turnips: 'I am not a married woman. I have two children. I have had three', (pp.7-8). For Hunt's references to the witnesses, which he presumably reserved for his loyal readers, see. p.30.

protect their men and others, so long as putative fathers paid according to their means, did so to procure a more substantial rate of payment for their children. Hugh Loman, a Crewkerne yeoman, was brought 'into great perils' and put 'to many heavy Costs and Expenses' by the false accusation of Martha Churchill, a spinster of the same place.<sup>65</sup> Churchill was not indicted but the child's real father, John Laurence, a breechesmaker, was charged with suborning Churchill to commit perjury by offering her a guinea to make the false statement. Churchill, perhaps under pressure from the guardians and in an effort to keep herself out of gaol, was the only witness listed on the indictment. John Grayham alias Grimes, an innholder of Twerton in Devon, was accused in 1741 of soliciting Joanna Hilliard to charge George Davy, gentleman, with being the father of the bastard she was then big with and promising her £100. <sup>66</sup>Betty, the wife of Daniel Walters, a Compton Dando labourer, had given birth to a chargeable bastard while she was still the widowed Betty Sweet, and it was claimed that she falsely accused William Waters, who lived at a brass works in Gloucestershire, of begetting the child at Lansdown Fair nine months before. Presumably her marriage

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<sup>65</sup>Q/SI 406 (Wells, 1786).

<sup>66</sup>ASSI 24/40 (Winter, 1741): process book.

to another man, which had taken place within five months of the birth, cast doubt on Walters's statement.<sup>67</sup>

The false sexual accusation, whether used for financial gain, harrassment or convenience, was still visible in our period but its application was probably narrower than it had been in the seventeenth century. Male honour had become sufficiently divorced from heterosexual misbehaviour to enable most of the men we have described to value their financial loss above any damage done to their good names.

#### V. Unnatural Acts

Among the threats that blackmailers could choose from, perhaps none was more dangerous to a victim than the offer to expose him as a sodomite. Smollett observed that the city of Bath was furnished 'with those who lay wanton wives and old rich widows under contribution, and extort money, by prostituting themselves to the embraces of their own sex, and then threatening their admirers with prosecution'.<sup>68</sup> Men were susceptible to blackmail

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<sup>67</sup>Q/SI 384 (Ilchester, 1764). The doubt about the paternity of the child may reflect a genuine belief in sexual exclusivity (it was unthinkable that Sweet could have a child by one man and shortly thereafter marry another) or it may have constituted a form of harassment unrelated to Sweet's sexual practises (the witness was Samuel Brodrip, not William Waters, and no bill was found).

<sup>68</sup>Smollett, Peregrine Pickle, 2:292.

for sexual practises that were, according to statute law, unnatural and therefore capital offences, and buggery, whether with man, woman or beast, was proscribed under a law that originated in the reign of Henry VIII.<sup>69</sup>

While the evidence for a link between sodomy and blackmail in Somerset exists, it does not for bestiality. Suspected bestiality may have been equally damaging to male reputation, but the age and class of many offenders would have made them inappropriate targets for extortionists.

Though buggery was widely recognised as an abhorrent crime, there were circumstances in which it was tolerated. Historians have identified communities, usually defined by age and occupation, within which deviant practises, and particular sodomy, were accepted. Our evidence suggests that popular definitions of buggery differed sufficiently from the official, legal ones to permit considerable latitude in sexual practise - enough, certainly, to save many men from being

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<sup>69</sup>25 Hen VIII c.6. This was revived as 5 Eliz. c.17, which remained in effect until 1861. 9 Geo IV c.31 cl.15 also re-enacts it. For some of the more notorious cases of homosexual blackmail in the late eighteenth and early nineteenth centuries, see H. Montgomery Hyde, The Love That Dared Not Speak Its Name. A Candid History of Homosexuality in Britain (Boston: Little Brown and Company, 1970), pp.69-70, 77-8. Because reputation is our major concern in the pages that follow, I will not always distinguish between attempted sodomy or bestiality (a lesser crime) and commission; both charges were extremely damaging to a man's reputation.

permanently identified as sodomites and felons. The evidence is stronger for sodomy than for bestiality and any speculation as to the meaning of bestiality prosecutions must be based on the very rudimentary data offered in indictments and the stray comments of upper class observers such as Henry Hunt and Jeremy Bentham. Sodomy, on the other hand, has its own secondary literature as well as a body of case material that includes informations and examinations. It is those cases that bear most directly on the problem of reputation, that define the limits of tolerance and confront the issue of blackmail, that will be considered in this section.<sup>70</sup>

Abhorrence for unnatural crimes was widespread enough to seriously endanger the reputations and even the lives of men who were accused of committing sodomy or bestiality. Again, Smollett describes the reaction of a crowd to 'a certain effeminate beau', who was taken for a woman when his chair overturned: when the rescuers discovered their mistake 'their compassion was changed into mirth, and they began to pass a great many unsavoury jokes upon his misfortune, which they now discovered no inclination to alleviate; and he found himself very

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<sup>70</sup>Because sodomy and bestiality were felonies, the church courts had no jurisdiction over slanders containing such allegations. Nonetheless, charges of bestiality, directed at women, do occasionally appear in defamation libels: see *Evans v. Bryant*, D/D/Ca 434 (1775) and *Andrews v. Pobjay*, Chap. 6, above.

uncomfortably beset'.<sup>71</sup> Jeremy Bentham, who considered buggery, or pederasty as he called it, in the context of his penal reform scheme and also as part of his project of submitting morality to utilitarian analysis, recognised that the severity of the punishment and the general moral antipathy to sodomy made it a useful weapon to the extortionist, particularly because circumstantial evidence was not required to prove any offence short of a rape.<sup>72</sup> (Bentham also supposed that men only chose

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<sup>71</sup>Smollett, Peregrine Pickle, 4:122-23. For the effeminacy of eighteenth century sodomites and sodomite stereotypes, see Randolph Trumbach, 'London's Sodomites: Homosexual Behavior and Western Culture in the 18th Century', Journal of Social History 11(1977-8):11;13; and A.D. Harvey, 'Prosecutions for Sodomy in England at the Beginning of the Nineteenth Century', The Historical Journal 21(1978):943. Sodomite scandals were not easily erased from popular memory. Hyde, Love That Dared Not Speak Its Name, p.88, cites a case in which those assisting a man assaulted by a Cambridge fellow tell the clergyman that they will take him into Cambridge like the bishop was taken to St. James, a reference to a scandal of the previous year.

<sup>72</sup>Louis Crompton, ed., 'Jeremy Bentham's Essay on "Paederasty" Part 2', Journal of Homosexuality (hereafter J. Homosex.) 4 (1978):99. For the more stringent evidentiary requirements of the Navy, see Arthur N. Gilbert, 'Buggery and the British Navy, 1700-1861', Journal of Social History 10(1976):73-7. Because of the nature of shipboard life, sodomites were more easily caught in the act and many witnesses claimed they had tactile as well as a visual proof of penetration. A judicial ruling of 1781 required proof of emission and penetration to obtain a conviction, but in 1828 Parliament passed a law declaring that proof of penetration was the sole criterion for distinguishing between attempted acts of rape or sodomy and their commission. See also Hyde, Love That Dared Not Speak Its Name, pp.68-9;91; and 9 Geo IV c.31.

beasts as their sexual partners in desperate circumstances and that decriminalisation, which he also advocated for sodomy, would disarm blackmailers without encouraging the spread of the vice).<sup>73</sup> Innocence was no protection to the accused sodomite, and proof of commission of the crime was not critical to popular judgement: 'Whether a man be thought to have actually been guilty of this practise or only to be disposed to it, his reputation suffers equal ruin'.<sup>74</sup> Indeed, the accusation, according to Trumbach, rendered all the standard evidence of good character dubious and made legal defence that much more difficult.<sup>75</sup>

Moral antipathy to sodomy and bestiality, while general, was qualified in ways Bentham does not suggest. (The unfortunate beau described above, for instance, was saved by the intervention of the eponymous hero, Peregrine Pickle).<sup>76</sup> Practical explanations for the tolerance of sexual deviation have been advanced by historians, but they have little bearing on conditions in Somerset. E. William Monter demonstrates that in Geneva, from the mid-sixteenth to the late seventeenth century, a

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<sup>73</sup>Crompton, 'Bentham's Essay, Part2', p.102.

<sup>74</sup>Ibid., p.100.

<sup>75</sup>Trumbach, 'London's Sodomites', p.21.

<sup>76</sup>Smollett, Peregrine Pickle, 4:123.



period when sodomy trials were at their height, men outnumbered women in the city: while in the rural canton of Fribourg, where cows outnumbered humans, there were thirty-two trials for bestiality between 1599 and 1648.<sup>77</sup>

It would be difficult to correlate the multiplication of prosecutions in nineteenth-century Somerset with alterations in the ratios of men and women or animals and humans. The delayed age of marriage and a paucity of premarital sexual opportunities may have had some bearing on the practise of bestiality in the countryside where young agricultural labourers may have reconciled themselves to the inevitable wait with animal partners, yet in the city of Bath, where women consistently outnumbered men, the impulse to commit sodomy must have had some other origin.

Toleration of deviant sexual practises within certain communities, or among particular class, occupational and age groups--women were treated ambiguously under the sodomy statutes, and no women were prosecuted for either crime in our period--has important implications for the definition of male sexual reputation.<sup>78</sup>

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<sup>77</sup>E. William Monter, 'Sodomy and Heresy in Early Modern Switzerland', *J. Homosex.* 6(1980-1):43-44;47.

<sup>78</sup>Though in Europe lesbians were punished along with male homosexuals, the English statute was interpreted to exclude women. Women were not, however, exempt from the bestiality clauses: Louis Crompton, 'Homosexuals and the Death Penalty in Colonial America', *J. Homosex.* 1(1976):278; *idem*; 'The Myth of Lesbian Impunity:

One exception to the European intolerance of all homosexual behaviour was the countenancing of adolescent homosexuality. This and other forms of temporary homosexuality did not appear to challenge traditional definitions of masculinity.<sup>79</sup> Jeffrey Weeks, in his exploration of male prostitution, identifies worlds symbiotic with homosexuality that provided prostitutes, among them the Guards, 'notorious from the eighteenth century and throughout Europe for their easy prostitution'. The Guards and members of certain working-class groups were considered 'indifferent to homosexual behaviour'; the prostitute recruited from their ranks discovered that he could make money with 'little effort and with no risk of stigma by his fellows'. The crucial factor, however, was the ability to participate in homosexual acts without forfeiting one's self-definition as a man.<sup>80</sup>

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Capital Laws from 1270 to 1791', *J. Homosex.* 6(1980-1): 11. Bentham believed that lesbianism was not only overlooked by the law, but little practised: *idem.*, 'Bentham's Essay, Part 2', p.100. A letter written by Elizabeth Montagu from Bath in 1750, explaining her view that lesbianism threatened the right of women to close friendships with each other, is quoted in Neale, *Bath*, p.21. For a very complicated cause involving anal intercourse between a husband and wife, based upon the subsequently withdrawn complaint of the wife, see DD/TB box 18 F.T.7 (Carew papers).

<sup>79</sup>Trumbach, 'London's Sodomites', p.2.

<sup>80</sup>Jeffrey Weeks, 'Inverts, Perverts, and Mary-Annes: Male Prostitution and the Regulation of Homosexuality in England in the Nineteenth and Early Twentieth Centuries', *J. Homosex.* 6(1980-1):122;125. For

The navy, too, represented an area in which sodomy was severely punished and yet practically tolerated in some degree. Arthur N. Gilbert, in his investigation of the Africaine courts-martial, turned up considerable evidence that sodomy was widely practised aboard the ship and that some crewmen, far from expressing antipathy to buggery, considered it acceptable sexual behaviour. Interestingly enough, the officers who were court-martialled emphasised that their loathing for the crime would have prevented them from committing it. Regardless of whether this represented their personal conviction as accurately as did the statements, some of them hearsay, of the sailors, or whether this was the rhetoric they thought would go down with the judges, the fissure between officers and men suggests a division that, while it certainly was not characteristic of society as a whole, reminds us that attitudes could have been circumstantially determined and the disgust for buggery could be suspended under the proper conditions.<sup>81</sup>

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another article on tolerance, see Martin Bauml Duberman, "Writhing Bed Fellows": 1826-Two Young Men from Antebellum South Carolina's Ruling Elite Share "Extravagant Delight", J. Homosex. 6(1980-1):85-101. Duberman argues for an enclave of tolerance among the southern white elite of the 1820s based on the very thin evidence of two letters and the aspirations and future accomplishments of the correspondents.

<sup>81</sup>Arthur N. Gilbert, 'The Africaine Courts-Martial: A Study of Buggery and the Royal Navy', J. Homosex. 1(1974):111-22. Four men were hanged, two

Where enclaves exist in which sexual norms differ--and where the definitions of reputation have been amended accordingly--reputation only suffers when their insulation from the outside world is breached. Trumbach has documented a London sodomite subculture with its own meeting places, customs and argot that was vulnerable to the waves of religious fervour that produced the moral crusades of the eighteenth and nineteenth centuries; to the poor choice of a partner by a member; or to the pressure upon members, once accused of sodomy or some other offence, to ransom their necks at the expence of turning informer on their sodomite companions. It is unlikely that even the city of Bath supported a sodomite subculture of these dimensions, and neither the first nor the last of the circumstances mentioned by Trumbach is immediately obvious in the Somerset sodomy prosecutions, but the misjudged advance seems to have undone many men. The Somerset material is too thin to enable us to do more than speculate on the limits of sexual tolerance: limits which in turn defined the risk

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whipped and the three officers were discharged and sentenced to two years in solitary confinement in the wake of the courts-martial. Bentham noted ironically that sodomy was the only maritime offence, including treason, for which no mercy was allowed: 'The safety of the fleet and of the Empire were in the eyes of the legislator objects of inferior account in comparison with the preservation of a sailor's chastity': Crompton, 'Bentham's Essay, Part 2', p.106.

to a man's reputation of pursuing variant sexual practises.

Though legal records do not indicate that prosecutions for bestiality were malicious, it is likely that a similar blurring between what was tolerated and what was not resulted in the arrival of twenty-five Somerset men in court, charged with attempting or committing bestiality a total of twenty-seven times. Of the twenty-five, eighteen were identified as labourers, one as a mason and a labourer, and one as a carpenter.<sup>82</sup> In the three cases where ages are given, the defendants were uniformly young: 23, 22 and 14. Their crime were committed almost entirely in the summer months, and their partners were common farm animals.<sup>83</sup> It is possible

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<sup>82</sup>Five occupations not given; one man charged three separate times.

<sup>83</sup>Of the nineteen cases for which a month was given, fifteen occurred between April and August, and two each in December and March. Named partners included fourteen mares, five she-asses, three sows, two cows, one ewe, one heifer and one duck. Of course, most of these animals could be found as easily in parts of Bath as in a rural parish. The two prosecutions from Bath (Lyncombe and Widcombe parish) named a cow and a she-ass, while mares, sows and a duck were among the animals named for other towns. Robert F. Oaks, '"Things Fearful to Name": Sodomy and Buggery in Seventeenth-century New England', Journal of Social History 12(1978):275, also notes the preponderance of young men and boys in bestiality indictments. See Keith Thomas, Man and the Natural World; Changing Attitudes in England 1500-1800 (London: Allen Lane, 1983), pp.97-8, for the execution of animal partners on the Continent and in America. The animals were executed, often in human style, not because they were

that these young male labourers, many from small rural parishes, were representative of those who practised bestiality without getting caught, and that their prosecution was related to the aggravation of their crimes, the coupling of this offence with other anti-social behaviour, or detection by those who did not share in the prevailing tolerance.<sup>84</sup> The latter point would be more easily determined if we knew something about the witnesses in these cases; as it is we have no more to go on than gender and a single occupational reference. Names of thirty-two witnesses survive, of whom eight were women and one was a clergyman. Women, of whatever class or occupation, may have been automatically excluded from this male sexual subculture.<sup>85</sup> Clergymen would have

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capable of moral responsibility but to symbolise abhorrence for the act.

<sup>84</sup>Eight cases from the archdeaconry of Wells; five from the archdeaconry of Bath; seven from the archdeaconry of Taunton; five unknown. Two causes originated in Lyncombe and Widcombe, and four more in market towns. Eight of the parishes had fewer than 600 inhabitants; three had less than 1000; ten had more than 1000.

<sup>85</sup>There is one piece of evidence that suggests that men may have become identified with a deviant sexual subculture as a result of the stigma attached to assuming, willingly or not, the passive role. John Pickford, a yeoman of Pilton, was charged with attempting to bugger George Pike in 1809. The witnesses to the indictment were Pike and James and John Dunkerton; no bill was found: ASSI 25/9/20. Three years later, Pike himself was found guilty at Assizes of attempting to bugger a mare at Pilton. Pike, aged 14, was sentenced to twelve months in prison and two public whippings. The witnesses were James and John Dunkerton: ASSI 23/9 (Summer, 1812);

opposed it on scriptural as well as legal grounds, and in the case where a clergyman gave evidence, the cause originated in a parish with barely fifty inhabitants, none of whom joined the parson as witnesses.<sup>86</sup> The conviction rate, which need not have been high to interest blackmailers in such a potent weapon, was higher than for sodomy.

TABLE IXA: Convictions\*

	SODOMY				BESTIALITY			
	<u>Pro-secu- tions</u>	<u>No. of Defen- dants</u>	<u>Convic- tions</u>	<u>True Bills</u>	<u>Pro-secu- tions</u>	<u>No. of Defend- dants</u>	<u>Convic- tions</u>	<u>True Bills</u>
1740-9	2	2	0	1	2		0	0
1750-9	3	3	0	1	1		0	0
1760-9	7	5	0	3	0		0	0
1770-9	4	3	0	0	2		0	0
1780-9	3	3	3	0	1		0	0
1790-9	8	4	1	2	1		0	0
1800-9	6	6	0	1	1		0	0
1810-19	12	9	5	1	8		4	0
1820-29	8	6	1+1	5	6	4	4	0
1830-39	2	1	0	2	2		0	1
1840-49	<u>0</u>	0	0	0	<u>3</u>		0	3
	55 offences				27 offences			

\*This includes felonies and misdemeanours; some of the sodomy convictions were for common assault or aggravated assault. True bills are included as possible convictions. Assize causes are not included after 1828, which may artificially reduce the number of prosecutions after that date.

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25/9/10; 25/9/20; 24/44 (Summer, 1812): process book.

One of the two sodomy prosecutions noted by Quaife involved an innkeeper who not only had a long history of attempting buggery and achieving sexual satisfaction with men, but who purportedly interspersed his assaults on the local blacksmith with attempts on the horses he was shoeing and invitations to watch him bugger his sow: Wanton Wenches, pp.175-77. The man's lengthy and public career as a sexual deviant in a small village raises interesting questions about tolerance. (See n.87, below).

<sup>86</sup>Angersleigh case: ASSI 23/10 (Summer, 1813);

Eight men were found guilty (six of attempting bestiality, a lesser offence, and two of committing it) and an equal number were acquitted, though one of these last was required to find 'two sureties for the space of five years to be approved by two of His Majesty's Justices of the Peace for this county to be bound himself in the sum of £100 each each surety in the sum of £50'— a directive that may have amounted to a gaol sentence for a poor man.<sup>87</sup>

One indictment was quashed, five indictments resulted in no bill (three for bestiality, and one on both charges) and four indictments were returned true without information being given on the ultimate outcome of the cases.<sup>88</sup>

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25/10/13: process book; 24/44 (Summer, 1813); 25/10/4.

<sup>87</sup>Of the guilty, one was to hang. He was simultaneously charged with three offences committed over a period of six years, though no bill was found for the two earlier offences: ASSI 25/17/21; 23/10 (Summer, 1822). Another man was reprieved, and the remaining six received gaol sentences of one or two years and were ordered to be whipped, sometimes publicly, usually twice a year. The sureties case is in ASSI 23/6 (August, 1747). B.R. Burg, 'Ho Hum, Another Work of the Devil: Buggery and Sodomy in Early Stuart England', *J. Homosex.* 6(1980-1):71-4, uses the trial of the Somerset man mentioned in n.85, above, to show that it was an 'aggregate of social behaviour', including crossing class boundaries in the search for sexual partners, that led to harsh punishment. According to Burg, the defendant was accepted by witnesses as a long-time buggerer, but his attempt at bestiality was too much for them.

<sup>88</sup>The quashed indictment involved the duck and was quashed for insufficiency. This may have been a malicious prosecution, or it may demonstrate a tendency to tolerate sexual deviance among the insane: ASSI 25/11/21. There is one remaining indictment for which no



The human participants in bestial acts differed in many ways from the sodomites named in indictments and informations. The forty-two sodomites included a gentleman, six clergymen, six yeomen, an apothecary, four tradesmen (a victualler, a brewer, a corndealer and a clothier), a tailor and twelve labourers.<sup>89</sup> This occupational configuration conforms to that discovered by Trumbach for eighteenth-century London sodomites in that it excludes the aristocracy and is drawn primarily from the lower and middle classes.<sup>90</sup> The preponderance of

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information as to outcome exists. As to the charges, thirteen were charged with committing bestiality (including four misdemeanours at Quarter Sessions which, like attempted bestiality, were lesser charges); eight were charged with the attempt; and six with both. Of these six, two were acquitted, three found guilty of the attempt and one of the commission.

<sup>89</sup>The sodomite community, particularly in Bath, must have been far larger than this figure suggests. Some cases may have come up at Bath Quarter Sessions (Haddon, *Bath*, p.101, refers to an alderman charged in a "Sodomiticall Attempt" in 1740) and many sodomites avoided brushes with the law. Occupation was not given in eleven of the Somerset indictments. Occupational designations are far less accurate than those given in church court records, which can often be corroborated in depositions. While this does not alter the general pattern, it does disguise significant occupational diversity, as when 'labourer' is used to describe servants and all varieties of wage earners. See Tyler blackmail case, below, for examples of these discrepancies. The total number of offences was fifty-five; one man was charged by four plaintiffs, three men by three each, and four men by two each.

<sup>90</sup>Trumbach describes the London homosexual subculture as consisting of adult men of all ages, drawn from all lower and middle class occupations, a third of whom were married: 'London's Sodomites', pp.18-19.

clergymen may be attributed to many factors: anti-clericalism, the ancient association between the priesthood and buggery, the concentration of clergymen at Bath (where opportunities for illicit sexual activity of all kinds were greater), and a visibility that made it difficult to merge into whatever protective grouping existed.<sup>91</sup> Bath and its environs supplied twelve defendants who committed sixteen offences; another eight men (eleven offences) came from market towns; and only five defendants (seven offences) resided in the western archdeaconry. With occupational diversity probably came a greater variation in age; the four given in gaol books range from 21 to 68.<sup>92</sup> Witnesses listed in thirty-seven cases included sixty-two men and fifteen women and the most common witness was the man or boy who had brought the complaint.

There are two patterns that emerge from the information given in sodomy indictments that suggest that

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<sup>91</sup>For the evolution of secular jurisdiction over sodomy and its ancient association with the celibate clergy, see Michael Goodich, 'Sodomy in Medieval Secular Law' and 'Sodomy in Ecclesiastical Law and Theory', J. Homosex. 1(1976):297; 427; and Burg, 'Ho Hum', p.70. Hyde claims that clerical sodomites were invariably granted bail by magistrates, so that many of them fled abroad: Love That Dared Not Speak Its Name, p.82.

<sup>92</sup>Geographical distribution: eleven men from the Wells archdeaconry (fifteen offences); seventeen from Bath (Twenty-three offences); one defendant from Wiltshire; eight men unidentified (nine offences). The two other ages given were 24 and 49.

blackmail was neither difficult to accomplish nor infrequently attempted.<sup>93</sup> The first involves the witnesses: in the seventeen of the cases under study the complainant was the sole informant or witness, and in only two of the cases for which names of witnesses survive does the victim fail to give evidence.<sup>94</sup> Nor were the additional witnesses likely to have been present at the event, but instead were masters, fellow servants,

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<sup>93</sup>Trumbach has uncovered far more attempted blackmail in the London records than I have in Somerset: one-third as many as for sodomy and attempted sodomy. He also notes that the London subculture, while it screened men from prosecution, made them more susceptible to blackmail: 'London's Sodomites', p.21. In 1810, a year in which prosecutions and convictions reached a high level in London, extortion trials showed a similar increase: Arthur N. Gilbert, 'Sexual Deviance and Disaster during the Napoleonic Wars', *Albion* 9(1977): 104. Subculture is probably a strong word to use for any local sodomite activity, even in Bath. (Monter, 'Sodomy and Heresy', p.42, argues that cities needed populations of over 200,000 to support such a subculture). Yet Bath offered an extraordinary degree of anonymity and mobility because of its medical-leisure orientation. Informations suggest that the city had its own topography of sodomy: safe fields, pick-up streets, etc. See especially the case of John Shipton and James Williams, below.

<sup>94</sup>No names survive in sixteen cases; the two non-testifiers may have been minors, though some minors did testify. Gilbert, 'Buggery and the Navy', p.74, notes that Blackstone likened sodomy to rape, and warned that the testimony of children and victims must be carefully weighed and if possible corroborated. In practise, the Navy showed more scruples about accepting the accusations of boys than they did of victims in general (p.76) and courts-martial records indicate that judges were well aware that coercion and vengeance could motivate prosecutions (p.77). The Navy made frequent use of Surgeon's reports in sodomy and bestiality cases, more than it would seem the civilians did (p.93n).

friends, relatives or law officers who had been approached by the victims sometime afterward. There is no doubt that the evidentiary requirements for acts of attempted sodomy were minimal (sodomy itself was difficult to prove, and only six men were charged with the offence in Somerset) and though the conviction rate was low, there is no correlation between the number of witnesses and the success of the prosecution.<sup>95</sup> The second factor is belated prosecution, or even reporting, of the crime. While the observed pattern of self-witnessing may be in part justified by the circumstances under which attempted sodomy might be expected to occur, the reasons for keeping an actual sexual advance secret were more complex

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<sup>95</sup>Two men were charged with both attempt and commission, two men for committing sodomy together, and two with sodomy alone. Of these, only one was convicted, in 1825, and his punishment was not recorded. The remaining men were charged with a variety of misdemeanours, most frequently attempted buggery. Punishments were harsher than those meted out in eighteenth-century London and generally involved gaol terms of one or two years in addition to periods in the pillory (in a very aggravated case of 1811), solitary confinement (1814-5) and occasionally astronomical sureties and recognisances (see above). Cf. with Trumbach, 'London's Sodomites', p.21: he records a higher conviction rate (3/5) and lesser punishments for attempted sodomy as well as a higher conviction rate (1/2) for sodomy. Punishments in London in the early nineteenth century were more in line with Somerset punishments; evidence of the latter is too spotty to show a worsening trend: cf. Gilbert, 'Sexual Deviance and Disaster', p.109. On a national scale, for the years 1810 to 1818 inclusive, 102 men were committed for trial on the charge of sodomy, thirty were convicted, twenty-eight were acquitted and no bill was found for forty-four: Harvey: 'Prosecutions for Sodomy', p.948.

and cannot be divorced from a concern with reputation on the complainant's part. If the prosecution of a sodomite almost invariably required the victim to expose himself, one must consider the ways in which this inhibited men from acknowledging their participation in homosexual acts.

Informations and examinations make it clear that complainants were reluctant to reveal that they had been accosted or assaulted, and some admitted that they had endured a number of encounters before informing anyone of their problem.<sup>96</sup> This unwillingness to go to law (probably the inevitable outcome of a disclosure) may have had a mercenary foundation; some may have been at least temporarily satisfied with the common offers of money or employment, and others may have glimpsed ever-widening opportunities for extortion. But one must also consider the position of complainants vis a vis their seducers, their sexual attitudes and their fears for their own reputations. Some complainants, in a variation upon the archetypal heterosexual seduction scenario, were approached by masters upon whom they were dependent. Young complainants could claim ignorance of

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<sup>96</sup>Quaife, Wanton Wenches, pp.175-77, has located only two sodomy cases in his period (these were prosecuted at Quarter Sessions; he did not consult Assize records) but they reveal a similar reluctance to divulge these activities.

the significance of their acts, and older ones occasionally exhibited indifference. Sexual acts short of anal penetration were not necessarily recognised as buggery by the population at large, and this may explain the coexistence of a widespread and well-documented horror of the crime and a tolerance for certain homosexual acts in practise. Several statements made by complainants suggest that even though they knew they had participated in irregular sexual activity, they did not see themselves as committing buggery.<sup>97</sup> At the same time, the population

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<sup>97</sup>Arthur N. Gilbert, 'Conceptions of Homosexuality and Sodomy in Western History', J. Homosex. 6(1980-1):63;65, suggests that in the eighteenth and nineteenth centuries sodomy came to be identified with an act, anal intercourse, rather than with homosexual relations. The anal sex taboo stems, he argues, not from its non-procreativity, but from the association of the anus with excrement, beasts, death and evil. Others date this development earlier. Robert Oaks, 'Perceptions of Homosexuality by Justices of the Peace in Colonial Virginia', J. Homosex. 5(1979-80):37, feels that Coke made it clear that buggery was anal intercourse between men. Caroline Bingham, 'Seventeenth-Century Attitudes Towards Deviant Sex', Journal of Interdisciplinary History 1(1971):459, cites the chief justice's attempts to persuade the reluctant jury in the trial of the Earl of Castlehaven (1631) that emission, rather than penetration, was sufficient proof of buggery. Gilbert and Oaks are discussing legal and moral conceptions; but as Bingham's evidence shows, popular conceptions, even those of the upper class jurors in the Castlehaven case, linked buggery with anal intercourse, probably exclusively, as early as Coke did. For a clear description of the metamorphosis of the sodomite into the homosexual--in moral, legal and medical terms and in the popular mind--see Weeks, Sex, Politics and Society, pp.99-102. Both Trumbach, in 'London's Sodomites' and Weeks, in 'Inverts, Perverts, and Mary-Annes', argue that though there was considerable pressure on sodomites to adopt a permanent role, the distinctions were far more fluid.

at large does not seem to have distinguished between commission of the crime and attempted commission. Once caught, a man was as likely to be stoned to death in the pillory for attempted sodomy as for sodomy, regardless of the law.<sup>98</sup>

When William Bence, a mason doing a job of a few months duration for the Rev. W. Conybear, was accosted in the hayloft by Joseph Beckett, one of Conybear's servants, he told him '"to go to Bath and get a Whore"'. Yet neither Bence nor Joseph Butler, a carpenter similarly employed, felt they could say anything in the village about Beckett's repeated solicitations and assaults for fear of being discharged from their work.<sup>99</sup> James Philip, a servant to Mrs. Peck of Walcot, had been approached by the Rev. John Graves three times and had taken 2s. in drinking money from him, despite his reported efforts to discourage his advances, when a man knocked at his mistress's door and declared: 'it is reported all over Town that Mr. John Graves has used a person ill in the bugging way' and that the young man inhabited that very house. Philip's immediate response was to warn the man that 'people ought to be very

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<sup>98</sup>See the following section for the way in which Henry Hunt played on this disregard for legal definitions among the prisoners of Ilchester gaol.

<sup>99</sup>Q/SR 396 (Easter, 1815).

cautious how they talk of such things' and to deny any knowledge of the incident. Philip also claimed that he did not discover his persecutor's name until later that day. He made his information before the mayor three days later.<sup>100</sup>

James Bane, who turned a man who claimed he was the Rev. G. Morgan over to Walcot watchman after a midnight walk across the city during which Morgan made his intentions more than clear, was quick to assert that 'he had been with a female' prior to encountering the clergyman.<sup>101</sup> The fear of compromising one's reputation, whatever one's private feelings about a little fondling or kissing, was a strong deterrent to men who participated, willingly or not, in homosexual acts and who considered prosecuting their seducers. While fear of exposure must have set limits to the activities of sodomites, the risks inherent in reporting the crime must have protected many who might have otherwise gone to gaol or to the gallows.

Most sodomites were well aware of the dangers they ran in approaching other men--of loss of reputation, death in the pillory, or hanging--and few informations are without a reference to the defendants' injunctions of

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<sup>100</sup>Q/SR 366 (Wells II, 1798).

<sup>101</sup>Q/SR 390 (Michaelmas, 1813).



silence, often reinforced by offers of money or employment.<sup>102</sup> Some, like the Rev. G. Morgan, went even further. He offered £1 to the Walcot watchman who apprehended him to enable him to escape, and when he was recaptured he was willing to exchange £5 for his freedom. If practising sodomites were willing to ensure the discretion of prospective partners and to bribe law officers in this way, it is not surprising that extortionists could make exorbitant demands on them.

William Tyler may have been one of the men of resolution described by Bentham. Where 'incidental

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<sup>102</sup>Stoning in the pillory, sometimes to the point of death, was an obvious indication of public abhorrence for the crime: see Trumbach, 'London's Sodomites', p.21 and Gilbert, 'Conceptions of Homosexuality', p.64. For some awesome descriptions of public hostility toward sodomites in London in 1810, see Gilbert, 'Sexual Deviance and Disaster', pp.104-8. Convicted sodomites desperately offered to turn informer in order to be excused from their hour in the pillory; its use in the cases was discontinued in 1816: Hyde, Love That Dared Not Speak Its Name, p.82. Latimer, Annals, cites the case of a Poor Law guardian sentenced for 'a filthy offence' in 1732 who hired 100 colliers to protect him, wore an iron skull cap and covered his body with heavy brown paper for his hour in the pillory; he was nonetheless released early because of the riot that erupted (pp.148;185). Crompton, 'Myth of Lesbian Impunity', p.17, compiles statistics on executions for sodomy in Britain: sixty between 1806 and 1835, with an additional forty-five carried out by the Navy between 1703 and 1829. Hangings ceased in England in 1835 or 1836, though the statute was not altered until 1861. The only conviction for sodomy in Somerset that may have resulted in an execution involved Joseph Bennett, a labourer of Bath, who was found guilty of bugging George Maggs the younger. Maggs was not among the six witnesses, two of whom were women, facts which suggest that Maggs was a child: ASSI 25/19/4 (Lent, 1825).

circumstances are favourable', such a man 'may stand the brunt and meet his accuser in the face of justice but the danger to his reputation will at any rate be considerable'.<sup>103</sup> Tyler certainly met his accusers, but he also may have suffered imprisonment and loss of reputation for a crime he may not have committed.<sup>104</sup> William Tayler otherwise Tayley, identified as a yeoman of Bedminster, was charged with assaulting and attempting to bugger William Mason, aged 21, on 21 April 1795.<sup>105</sup> His indictment came up at the same Sessions as a bill accusing Mason and Samuel Davis, both identified as Bristol labourers, with intending to deprive Tyler of his 'good Name Fame and Credit' and with attempting to extort money from him by conspiring to falsely charge him with 'unnatural and immoral practises'.<sup>106</sup> James White, a victualler and a constable of Bedminster, gave an information the day after the supposed buggery occurred,

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<sup>103</sup>Crompton, 'Bentham's Essay, Part 2', p.100.

<sup>104</sup>Outcome unknown, but a William Tayler otherwise Tayley was convicted of an unspecified misdemeanour at the next Sessions and sentenced to solitary confinement for two years and until he had paid a £50 fine. This is close to the standard sentence for attempted sodomy: Q/SR 363 (Taunton, 1795).

<sup>105</sup>Q/SR 363 (Bridgewater, 1795): Informations of James White and William Tyler, dealer in corn.

<sup>106</sup>James White's information reveals that Mason was a servant to Mr. Harris, a malster of Bristol, and that Davis was a servant to Mr. Jacobs, a glasscutter, also of Bristol.

in which he described two men coming to his house at nine o'clock in the morning. When he confirmed that he knew Mr. Tyler, one man said

"he ought to be hung" and addressing himself to the other Man desired he would shew this Informant whereupon the said other Man shewed his private parts which appeared a little swelled which he said was caused by...Mr. Tyler having the evening before taken him into a private place in...Bedminster and used him in a violent and indecent manner.

White suggested they confront Tyler with this accusation; Tyler 'appeared much surprized' and offered to vindicate himself before a magistrate. White then asked Mason and Davis in private what they wanted of Tyler and Mason replied '£100' and Davis 'immediately said they would have £50 which he would be damned if Mr. Tyler should not pay before they quitted the room'. When White communicated these demands to Tyler, he replied that he would not give them fifty farthings 'but would go to Justice'. White and Tyler went, as appointed, but Mason and Davis failed to appear.

Tyler admitted to drinking with Mason the night before in two pubs in Redcliff Street in Bristol, but claimed that they had parted at the Coach and Four about ten o'clock.<sup>107</sup> He had never been anywhere else with

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<sup>107</sup>The city of Bristol would have to be included in any major study of the sexual and marital practises of the people of Somerset. Long the largest city in the region, and with many economic ties to the county, it played an obvious social role for those who lived in the neighbouring Somerset parishes. But its attractions were

Mason. Davis was unknown to him when he came the next day with White to make 'a charge against him of an indecent and unnatural kind'. Davis and Mason were charged with extortion on the oaths of Tyler and White, and rapidly committed, though they were bailed prior to Bridgewater sessions, where a true bill was found against them.<sup>108</sup> Mason and Davis nevertheless brought their charge against Tyler, telling a magistrate that Tyler had put his hands into Mason's breeches and fondled his private parts. Again, the jury found a true bill. The final decision as to the guilt of Tyler's accusers is not recorded.

The single member of the titled classes to be implicated in a sodomy cause, Sir Thomas Swymmer Champneys, was also a victim of blackmail. In 1821, Champneys, then identified simply as 'Esquire', charged George Messiter, a gentleman of Frome, with trying to aggrieve and financially burden him by persuading four

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more extensive, and its separate legal identity made it a haven for those avoiding the law: couples seeking a clandestine marriage, adventurers running off with heiresses, bigamists all made their way across the border. Quaife even claims that the city provided husbands for pregnant Somerset spinsters in some numbers in the seventeenth century: Wanton Wenches, p.113.

<sup>108</sup>Q/SI 415 (Bridgewater, 1795). Sodomites and extortionists were both allowed bail in London and often escaped before trial: Gilbert, 'Sexual Deviance and Disaster', p.103.

men to falsely testify at Assizes that Champneys had attempted to commit buggery.<sup>109</sup> (Neither Messiter nor Champneys were new to the law. The previous year a man of the same name, parish and occupation as Messiter had charged Samuel Wheeler with libel for posting rewards for his capture, and in 1815 Thomas Swymmer Champneys, Esq., of Orchardleigh, had been charged with assaulting Joseph Townsend, his wife Ann and Pamela Townsend.<sup>110</sup> All four, and Charles Harrison, were listed as witnesses in the extortion trial, which was removed from Quarter Sessions by a writ of certiorari.

Whatever the outcome of the proceeding (and there is no record of the earlier charge against him, which indicates that Messiter only threatened to take him to court), Champneys, now identified as a baronet, late of Ilchester, was arraigned before the Lent Assizes in 1826.<sup>111</sup> There he was described as having a 'lewd wicked depraved and abandoned mind and disposition and wholly lost to all sense of shame and decency and devising and intending to vitiate the mind and corrupt the morals of one Henry Bragg and to excite in his...mind

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<sup>109</sup>Q/SI 441 (Easter, 1821).

<sup>110</sup>Q/SI 436 (Epiphany, 1816). A true bill was found. The three victims were joined as witnesses by Joseph Townsend the younger.

<sup>111</sup>ASSI 25/19/6 (Lent, 1826).

filthy lewd unchaste and abominable desires and inclinations'. Champneys tried, according to the indictment, to solicit Henry Bragg to commit buggery with him on two recent occasions. The tenor and wording of the charge suggest that Bragg was a minor, though he is listed as the sole witness. No bill was found, but whether we should attribute this to Champney's innocence or influence is uncertain, for the sexual molestation of children, of whatever sex, was universally deplored, even if standards for physical contact between adults and children were ambiguous. The baronet's legal entanglements, unique to his class in the county, may have stemmed from a number of sources.<sup>112</sup> First, Champneys may have been a sodomite, if an unconvicted one. Second, he may have been alone among his peers in resisting blackmailers. (William

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<sup>112</sup>Trumbach, 'London's Sodomites', pp.19-20, suggests that aristocrats maintained their own homosexual network which benefitted from their greater geographical mobility. Nonetheless, aristocrats were linked to the sodomite subculture, and some of its less savoury zones, through blackmail and prostitution, and Sir Thomas's legal problems may represent just such a link. For some account of contemporary aristocratic sodomite scandals, see Hyde, Love That Dared Not Speak Its Name, pp.70-9. Champneys, of course, was not the only sodomite of note in the county. William Beckford, the heir to an enormous sugar fortune and M.P. for Wells, fled the country in 1785 after the scandal caused by his suspected liaison with the seventeen-year-old William Courtenay made life in England unbearable. Though the evidence was insufficient for a prosecution, it was enough, when taken up by the Press, to permanently ruin Beckford's reputation. An outcast, estranged from his family, Beckford spent the final twenty years of his life in Bath: Alexander, England's Wealthiest Son, pp.107-18.

Beckford, more typically, fled the country). Finally, the original extortion trial may have marked him as a suspected sodomite, and left him open to subsequent accusations.

Victims could go to great lengths to entrap sodomites, but we only know of those cases in which the entrapment was intended, probably from the outset, to result in arrest or at least a cessation of advances, rather than in blackmail. John Shipton, a shopman to a Bath linen draper, met James Williams in the Gravel Walk as he went to and from an errand on the evening of 15 or 16 September 1813.<sup>113</sup> Shipton sat and walked with Williams, protested mildly when Williams carressed him, and arranged to meet him again the following Saturday. Shipton then went home and informed his master of all that had passed. Two days after the appointed meeting, Shipton again encountered Williams, followed him into a field behind Marlboro Buildings and submitted to more kissing and caressing. Once again, Noah Coward, Shipton's master, was informed. On the evening of 24 September, Shipton met Williams, as previously arranged, at the Crescent. This time, their activities in the fields were interrupted when Williams heard a noise. As he tried to escape, Shipton 'gave a signal to some officers who were in waiting' and Williams was taken into custody.

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<sup>113</sup>Q/SR 390 (Michaelmas, 1813).

John Shipton and James Reader, the informant in the following case, may have been quite young. Reader was a servant to Mr. Richard Nossiter Burnard, a surgeon of Crewkerne, and he was made aware of the Rev. George Donnisthorpe's sexual interest after he applied to him for a job in 1802.<sup>114</sup> In addition to being offered liquor and money, Reader was told that 'if he (Donnisthorpe) were a Lady and had ten thousand a year he would bestow it all on him'. During this meeting Donnisthorpe took Reader's 'private Member in his hand, knelt down on one knee and put it into his Mouth', an act which Reader did not equate with buggery. Reader only began to resist when Donnisthorpe tried to lay him down on a sofa. Though he did not depart immediately, Reader was uneasy, and later when Susanna Lye, a fellow servant, asked him if he was going to Donnisthorpe's to live he said 'no he would not if Mr. Donnisthorpe would give him a hundred a year, that he had a particular reason for it', and then he told her of his experience. The following Sunday, 29 August, he revealed his secret to Mr. Nicholas Baker, Mr. Burnard's assistant. Baker promised to write a letter to the offender if Reader would carry it. Reader saw Donnisthorpe at least four more times before Baker wrote, and during the final visit, on 3 September, he engaged in

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<sup>114</sup>Q/SR 370 (Taunton, 1802).



drinking and sexual play before presenting Donnisthorpe with the letter. (That it was not a blackmailing letter is suggested by Baker's having shown it to a local attorney before reading it to Reader and giving it to him to deliver.) Despite Baker's reported distaste for Donnisthorpe's acts - when Reader first told Baker of them he said 'he would lend him a knife to amputate the offending Member, if he would use it and at the same time expressed his Abhorrence of the crime' - he was willing to wait and then to simply warn Donnisthorpe off with a strong letter. It was not until the clergyman denied the charges that Reader and Baker went before a magistrate. Donnisthorpe was indicted for attempting buggery with James Reader on three occasions, and the case was removed from Quarter Sessions, like so many cases in which clergymen were defendants, by a writ of certiorari.<sup>115</sup>

Though most historians of sexual deviance agree that attitudes towards buggery underwent a change between the seventeenth and twentieth centuries, few are agreed on the nature or even the direction of that change. In many ways, this is as much a problem of evidence as of interpretation. Historians who have relied upon statutes, commentaries, manuals and other examples of

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<sup>115</sup>Q/SI 422 (Taunton, 1802). Nor is it clear that Reader and Baker acted quickly at this point, for they did not give their information until 30 September.

official opinion have been struck either by the tone of vehement abhorrence for a crime condemned in the Bible or by the terseness of the treatment of the subject.<sup>116</sup> Whether the horror evoked by anal intercourse and by sodomites was predicated upon the biblical coupling of sodomy and catastrophe, the medieval association of

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<sup>116</sup>A comparison between the lenient punishments handed down in incest cases with the stiff penalties imposed on buggers in Elizabethan times leads Lawrence Stone to say that 'there is reason to think that sodomy and bestiality were more repugnant to popular standards of morality than breaking the laws of incest': Family, Sex and Marriage, p.491. This is not always the most productive approach to popular morality because, among other things, it obscures the popular definitions of these crimes that formed the basis for complaints and prosecutions. Bingham, 'Seventeenth-Century Attitudes Towards Deviant Sex', assumes that Englishmen of that period would unquestioningly take the biblical view and abominate sodomy, largely because the prosecutor in the trial of the Earl of Castlehaven expressed 'extravagant horror' for sodomy and demonstrated the religious basis of this horror. Unfortunately, she overlooks the significance of the jury's verdict: while all twenty-seven peers found Castlehaven guilty of rape, only fifteen voted to convict on the sodomy charge. These and other weaknesses in Bingham's article are pointed out by Bruce Mazlish in his comment, Journal of Interdisciplinary History 1(1971) and by Burg in 'Ho Hum'. Burg, however, defends the other extreme, that there was 'little hostility or opprobrium' attached to acts other than bestiality or homosexual child molestation, on the basis of equally slender evidence; unaware, perhaps, that taboos on buggery may have accounted for legal authors' seeming lack of interest in the matter. Nor do Bingham and Burg agree about Puritan attitudes towards buggery, Burg concluding that buggery was just one of many minor moral lapses (bestiality was far more serious); and Bingham taking the more traditional view that the Puritans were intensely hostile toward sexual deviancy. The swing away from this hostility was checked again at the end of the seventeenth century when a reaction against Restoration licentiousness set in.

sexual deviance with heresy; concern for the maintenance of marriage, family and reproduction (procreation was of particular significance during wartime); or upon the belief that bestiality 'threatened the firm dividing-line between men and animals' and resulted in monstrous conceptions, are questions that are not easily answered by the Somerset material.<sup>117</sup>

Historians who have studied prosecutions in the aggregate have been better able to describe the waxing and waning interest taken in buggery, though they are unable to determine the relationship between prosecution and practise. Religious revival, economic disaster and the outbreak of war all influenced the number of prosecutions and convictions for buggery and the harshness of the punishment meted out. Gilbert has attempted to link persecution of sodomites with 'perceived or imagined social disaster', and for the early nineteenth century points to 'an intensification of fear of deviance that parallels

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<sup>117</sup>Gilbert, 'Sexual Deviance and Disaster', p.111, thinks that the relationship between buggery and the marital and reproductive destiny of women was clearly illustrated by the exclusion of males from groups who pelted sodomites in the pillory at close range. See also Oaks, 'Perceptions of Homosexuality', p.38; Monter, 'Sodomy and Heresy', p.41; Vern L. Bullough, 'Heresy, Witchcraft, and Sexuality', *J Homosex.* 1(1974):183-201; Goodich, 'Sodomy in Medieval Secular Law', pp.295-302; *idem.*, 'Sodomy in Ecclesiastical Law and Theory', p.427; Crompton, 'Homosexuals and the Death Penalty', p.280. On the separation of animal and human spheres, see Thomas, *Man and the Natural World*, pp.39;134-35.

involvement in the long and threatening Napoleonic Wars. Pressure on homosexual men was particularly intense in 1810, when war weariness and fear of anti-religious and revolutionary French ways were combined with economic strife.<sup>118</sup> The year 1810 was not as significant in Somerset as it was in London: only one information against a sodomite is recorded. Gilbert characterises 1810 as the beginning of a period of discontent, yet indicates that the direct correlation between strife and fear of deviance ended with the war.<sup>119</sup> Trumbach has suggested that the development of an organised police force had an impact on the apprehension of sodomites, but Bath, unlike London, had been unusually well-policed in the eighteenth century.<sup>120</sup> The growth of Methodism and Evangelicalism may have had an influence similar to that of the rise of Calvinism in Geneva and the Catholic counter-reformation in Fribourg in the sixteenth and seventeenth centuries, or to the crusades of the Societies

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<sup>118</sup>Gilbert, 'Conceptions of Homosexuality', p.61, and 'Sexual Deviance and Disaster', where he develops the theme more fully in connection with London and the year 1810.

<sup>119</sup>The correlation between buggery courts-martial and wartime was most obvious in the Navy. Between 1816 and 1829 there were no trials; executions for buggery occurred almost entirely during wartime: Gilbert, 'Buggery and the Navy', pp.85-6.

<sup>120</sup>Trumbach, 'London's Sodomites', p.23.

for the Reformation of Manners in London between 1690 and 1730.<sup>121</sup> A.D. Harvey, who has consulted national data on sodomy prosecutions and convictions from 1804 and the London and Middlesex material from the mid-eighteenth century, has located the multiplication of both trials and executions in the first third of the nineteenth century. Where executions in the metropolis had averaged less than one per decade between 1749 and 1804, they became yearly occurrences until they ceased altogether in the mid-1830s.<sup>122</sup> As many as sixty men were executed as sodomites in England between 1800 and 1835.<sup>123</sup> Harvey attributes the statistical change to an increase in prosecution and persecution rather than to a burgeoning of homosexual activity. He offers a range of explanations, including, significantly, an intolerance arising from the hardening of sex roles, but finally fastens upon

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<sup>121</sup>Monter, 'Sodomy and Heresy', pp.45-50; Trumbach, 'London's Sodomites', pp.10-11. Trumbach, in opposition to Monter, argues that sodomy, far from being desacralized in the eighteenth century, continued to excite religious horror.

<sup>122</sup>Harvey, 'Prosecutions for Sodomy', p.939. Execution was reserved for murderers and traitors after 1836, though sodomy remained a capital offence until the Offences against the Person Act of 1861, 24 & 25 Vict. c.100.

<sup>123</sup>Ibid, p.941. Harvey counts fifty-five executions between 1805 and 1835 (p.947). Louis Crompton, 'Gay Genocide: From Leviticus to Hitler' in The Gay Academic, ed. Louie Crew (Palm Springs: ETC Publications, 1978), pp.67-91, comes up with slightly different and higher figures.

the 'sexual neurosis' of the period as the source of the observed increase in hostility towards sexual deviancy.<sup>124</sup>

If we descend from the legal treatises and statistics of prosecution to the realm of popular conceptions, it appears that the horror inspired by buggery was nearly universal but was susceptible to modification. The exclusive link between buggery and anal intercourse was well-established in the popular mind in the seventeenth century and continued to flourish, according to our evidence, during much of our period. Likewise, the rare (and largely urban) creature, the sodomite, conformed, in the popular imagination, to the effeminate or transvestite stereotype evoked by Smollett and other eighteenth-century writers. In the nineteenth century, however, a new definition of homosexuality as a vice pertaining solely to persons rather than to acts gradually arose. It owed its wide dissemination to greater literacy, exposure to urban life and improved communications, and as a definition it effectively eliminated temporary or circumstantial homosexuality and weakened the connection between buggery and anal intercourse, thus drastically narrowing the scope for popular tolerance. Weeks and other historians of homosexuality contend that the modern

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<sup>124</sup>Harvey, 'Prosecutions for Sodomy', pp.946-47.

homosexual (who could be pitied as a deviant rather than abhorred and punished as a criminal) did not fully emerge until the late nineteenth century. But the transition from sodomite to homosexual was a long one and its early echoes in popular consciousness may be detected in the multiplication of prosecutions, in Somerset and elsewhere, in the first third of the nineteenth century.<sup>125</sup>

In Somerset, there had been sufficient horror of buggery in the eighteenth century to guarantee a small stream of prosecutions. The consequences of the accusation were great enough to encourage blackmail and false prosecution and to discourage reporting the crime. The anxiety to avoid the charge on the part of victims and defendants is more clearly illustrated than a readiness to shun certain acts. In such a climate, male reputation was peculiarly vulnerable to attack, and many men were no doubt willing to pay off their accusers rather than to resist and risk revealing themselves.

Tolerance, if prosecutions are any indication, was on the decline in the nineteenth century: there was an upward trend in both sodomy and bestiality prosecutions in the county most pronounced in the period 1810 to

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<sup>125</sup>Weeks, Sex, Politics and Society, p.102: 'The latter part of the nineteenth century, however, saw the clear emergence of homosexuality although the elements of the new definitions and practices can be traced to earlier periods'.

1830. As long as sodomy and bestiality remained capital offences, as they did until 1861, and as long as the attempt to commit these acts was severely punished, the opportunities for blackmail and extortion did not cease. Popular tolerance for some unnatural acts was never sufficient to erase the threat of prosecution for all men, and it is likely that the tolerance predicated on popular definitions of buggery waned as buggery became a well-defined offence associated with a specific kind of individual, the homosexual. Though individuals undoubtedly benefitted from local and limited tolerance, sodomy and bestiality remained the most serious threats to male sexual reputation throughout our period.

#### VI. Henry Hunt and Ilchester Gaol

In the life of Henry Hunt, the radical reformer, we find an interesection of the national and the local, the public and the private, the patrician and the plebeian, that provides a final illustration of male reputation at the close of our period. Hunt was an important figure in the history and popular imagination of Somerset. Even before his incarceration in Ilchester gaol, his political views had gained a following in Somerset, and his name recurs regularly in the annals of early nineteenth-century protest in the county. In 1817, rioters in the mining districts of east Somerset chanted 'Bread and



Blood--Hunt forever'. More than a decade later, authorities investigating the Swing disturbances were quick to attribute local manifestations to the presence of Henry Hunt in the West Country.<sup>126</sup> But Hunt's most substantial connection to the county arose from his two-and-a-half-year stay in Ilchester gaol following his conviction for sedition after the Peterloo Massacre. (Sydney Smith, that other Somerset luminary, attended the trial at York Assizes in 1820 and was very impressed by Hunt's legal skill, pronouncing him the best barrister on the Northern Circuit. He did not, however, approve of Hunt, simultaneously describing him as '"a thorough ruffian"').<sup>127</sup> Hunt, a keen publicist, busied himself while in gaol by issuing fortnightly letters to his supporters, by writing and publishing his Memoirs and by instigating, through the publications of his Peep Into A Prison: Or, the Inside of Ilchester Bastile in London, an investigation by a Royal Commission into the horrendous conditions at the gaol.<sup>128</sup>

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<sup>126</sup>For 1817, see Neale, Bath, p.328. For 1830-1, see Hobsbawn and Rude, Captain Swing, espec. pp.84-91;98;186. His trip was unrelated to the disturbances.

<sup>127</sup>Bell, Sydney Smith, p.97.

<sup>128</sup>For a brief description of Hunt at Ilchester, see Llewelyn Powys, 'Ilchester Gaol' in Somerset and Dorset Essays (London: Macdonald, 1957), pp.80-88. The ambivalent reaction to Hunt the radical and Hunt the humanitarian persisted into the twentieth century: Powys

The writings that emanated from Ilchester gaol are doubly useful to us. In Hunt's lengthy defences of his own rectitude we discover some of the ways in which reputation was viewed and maintained by public men of the upper classes in this period. And in his communications with the radical masses we are exposed to a sexualised political culture that Iain McCalman has described as 'obscene populism'. Hunt's denunciations of the proclivities and practises of his opponents, his readiness to manipulate their sexual reputations in his political battles, form part of this tradition of 'unrespectable radicalism'; they also reveal the degree to which the sexual and the political were fused in plebeian culture.<sup>129</sup> It is Henry Hunt, then, who can broaden our picture of sexual reputation from the narrow territory of sexual insult to some of the larger sexual concerns of men and women in the past.

Hunt's attraction to public life, and his personal life, unconventional for a man of his class, made the defence of his reputation a complicated and absorbing matter. His separation from his wife in 1802, following

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counts himself grateful to Hunt, like all Somerset people, for his exposure of conditions at the gaol, while feeling uneasy about his faults.

<sup>129</sup>Iain McCalman, 'Unrespectable Radicalism: Infidels and Pornography in Early Nineteenth-Century London', Past and Present 104 (1984):74-110.

the establishment of a permanent menage with a married woman he had pursued for two years, insured that his reputation would become a matter of public debate and private concern.

Despite the irregularity of his marital situation (an irregularity created, in part, by the divorceless society he lived in) Hunt described himself as a paragon of male respectability. He had made a generous settlement on his wife and he continued to live virtuously. Not 'one act of seduction' could be held against him, he had no illegitimate offspring, he had not entered a brothel since his marriage and he had never 'seduced, and afterwards deserted, a female'.<sup>130</sup> Yet his adversaries were well aware of the political mileage to be gained from his situation, and never ceased to tax him with it; he, in turn, responded with the sexual slanders he knew would most appeal to his audiences. Hunt describes a Westminster election meeting many years after the separation where he was shouted down by men who asked about his wife (the rumour, which he went to great lengths to suppress, was that he had left her to starve) and talked 'such beastly and disgusting ribaldry as would

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<sup>130</sup>Hunt, Memoirs, 1:71. Indeed, one senses that Hunt felt the strictures of his class very strongly and envied the relative informality of both his plebeian followers and his aristocratic acquaintances: see espec. Memoirs 2:50-70; 138-39.

have disgraced the most abandoned inmates of the lowest brothel in the metropolis'. After they had made 'the most revolting, obscene, and truly horrid observations, relating to my wife', Hunt rounded on his attackers and announced that only 'some monster who was connected with a gang like that of Vere-street notoriety' would talk that way. Hunt, who was referring to a sodomite brothel scandal of 1810, had not misjudged the crowd. One man asked if Hunt were accusing him of 'unnatural propensities', and the Press reported that Hunt had charged a person with committing an 'unnatural crime, and pointed him out to the vengeance of the multitude before the hustings'.<sup>131</sup>

Like his radical London contemporaries who 'levelled their obscenity at evangelical enthusiasts, "saints" and Methodists, as well as at the corrupt and bloated parson of traditional radical demonology', Hunt was ready to tar his opponents with the brush of immorality, homosexual or heterosexual, at the hustings and in print.<sup>132</sup> 'Miss Hannah, who, in her younger days, had been a very frolicsome lass', he wrote of Hannah More, his Somerset neighbour, 'became all at once converted into a saint'. The innuendo goes further:

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<sup>131</sup>*Ibid.*, 3:582-83; Gilbert, 'Sexual Deviance and Disaster', p.104.

<sup>132</sup>McCalman, 'Unrespectable Radicalism', p.88.

'some of her neighbours were in consequence so ill-natured as to say, that her conversation was not sincere, but that it was a mere cloak to cover certain practises'. That this refers to fornication rather than lesbianism is suggested by an accompanying dismissal of Johanna Southcote, who Hunt accused of sleeping with her male disciples.<sup>133</sup> The clergy, and particularly parson-magistrates, were regular targets. 'Let me only take half a score of clergy man [*sic*], and half a score of magistrates, of this part of the county of Somerset', he wrote from Ilchester gaol, 'and in merely detailing the scenes of debauchery, seduction and desertion of which they have been notoriously guilty, I could fill a book that would excite the horror and detestation of every rational mind'.<sup>134</sup> At other times Hunt published the names of clergymen who had been accused of unnatural crimes and was at pains to demonstrate that each had been acquitted, sometimes at the expence of their poor accusers who were subsequently punished as libellers.<sup>135</sup>

Ironically, one of the men singled out by Hunt as an exemplary clergyman, Dr. Shaw, rector of Chelvey in

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<sup>133</sup>Hunt, Memoirs, 3:206.

<sup>134</sup>Ibid., 1:70.

<sup>135</sup>Hunt, 'Radical Reformers', 40 (10 August 1822):32-4.

Somerset, was less beloved by his parishioners. It was Shaw's tithes policy that brought down upon him the hatred, expressed in verbal and physical abuse, of his neighbours from the time of his induction in 1795. John Butcher Evans rode around Shaw, brandishing a horsewhip, calling him an old scoundrel and trying to force him to walk on the hay he had come to collect; Stephen Bennett Light, at the head of a crowd of fifteen reapers, declared that 'he should be Guillotined for taking the Tythes in kind'; and Matthew Carey, protecting the barley of Samuel Derrick, announced that 'all the Clergy were thieves that they had no right to Tythes'--a sentiment which Henry Hunt would have fully endorsed. Previously, someone had shot at Shaw and missed, and Carey was convinced that the assailant 'was a Damn'd bad marksman that he did not kill you ...If he...had a Gun you... sh[oul]d not escape'. Dr. Shaw was also responsible for the imprisonment of John Hudson of Backwell for failure to perform 'a certain piece of work in husbandry' which he had undertaken. Hudson claimed that Dr. Shaw had not paid him, and as he was being led off to the house of correction he told William Cole of Brockley 'that he w[oul]d carry Doctor Shaw to prison and he'd be damn'd if he w[oul]d not play a good stick to see him there'. Hunt does not remind us of Dr. Shaw's virtues, except to point

out that, though approaching eighty, he had twice visited him at Ilchester gaol.<sup>136</sup>

When Hunt was incarcerated at Ilchester gaol his prodigious literary output came to reflect these paradoxical elements, his personal concern with decorum and respectability and his immersion in a sexualised popular political culture that prized obscenity as one of its great weapons in its fight against oppression. Hunt's upper-class sensibilities were continually affronted by arbitrary regulations and the neglect of a classification system which would have, in his mind, imposed a suitable moral hygiene on the prison environment though the segregation of prisoners by crime, gender and age. It was not easy maintaining the status of a gentleman under these conditions, and Hunt had been purposely placed at a distance from his most ardent supporters by the authorities. Ilchester, as an anonymous author remarked, was the seat of the county courts and gaol, 'And as its principal dependance is on

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<sup>136</sup>For Hunt's comments on and attitudes towards the clergy, including his distaste for tithes, see Memoirs, 3:70-5. For the incidents of Chelvey, see: Q/SI 415 (Taunton, 1795): Articles of the Peace sworn against John Butcher Evans and Stephen Bennett Light; Q/SI 423 (Taunton, 1803): Articles of the Peace sworn against Matthew Carey; Q/SI 434 (Epiphany, 1814): Articles of the Peace sworn against John Hudson. Dr. Shaw was continually suing his parishioners for subtraction of tithes, and the causes appear regularly in the church court records.

the latter, it cannot well be either very polite, rich or happy'.<sup>137</sup> Again and again, Hunt appealed to the magistrates to admit as regular visitors his mistress, Mrs. Vince--though they had objected to her 'on the score of decorum and morality'--and 'any respectable females who may conduct themselves with propriety'.<sup>138</sup>

Instead, Hunt's female visitors, 'as respectable as [the magistrates'] own families', had to see him at the grate where felons and those 'charged with or convicted of unnatural and other crimes saw and met their visitors and associates'.<sup>139</sup> Hunt perceived this as persecution, for there were prisoners at Ilchester committed

for rapes, some for brutal assaults upon females, one for BEASTIALITY of the most revolting kind, some for forgery, for housebreaking, manslaughter, murder, &c &c - yet, not one of these persons is prohibited from seeing his FEMALE friends upon the same terms, and at the same time and place that he sees his MALE friends.<sup>140</sup>

The conditions in the gaol, and his own mistreatment, inspired Hunt to launch an inquiry into the prison and its administration by William Bridle, the governor.

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<sup>137</sup>Rural Elegance Display'd, pp.310-11.

<sup>138</sup>Hunt, 'Radical Reformers' 30 (11 March 1822):32 (this refers to a debate in Parliament, so presumably Hunt did not refer to her as his mistress); 6 (21 October 1820):9.

<sup>139</sup>Ibid., 6(21 October 1820):7; 4 (28 August 1820):3.

<sup>140</sup>Ibid., 6(21 October 1820):7.



While the wrongdoing that Hunt exposed was undoubtedly meant to sway the commissioners despatched by Parliament, it was also reported at regular intervals to Hunt's other audience, those who subscribed to his fortnightly bulletin, 'To the Radical Reformers, Male and Female, of England, Ireland, and Scotland'. To them, Hunt offered a catalogue of abuse and exploitation in which no sexual crime was without its political implications. The themes he emphasised tell us a great deal about this sexual-political culture and its views on decency and good reputation. It was a culture characterised by an affirmative attitude toward sex (as long as it was practised by consenting and monogamous, if not necessarily married, men and women); an abhorrence of sodomy, bestiality and rape; and a perception of sex as a tool of class exploitation, especially when it came to masters and servants; a source of pollution, when it did not respect the accepted boundaries; and a means of corruption when proffered by the unscrupulous.<sup>141</sup> Of this last, Hunt

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<sup>141</sup>Hunt occasionally referred to rapists in the same breath with buggerers, but he (and he echoes the law in this) considered it a lesser crime, and by no means an unnatural act. He was, for instance, affronted by the stiff sentences given to three men who assaulted 'a profligate, abandoned, and drunken prostitute, at Frome, in a drunken frolic'. While Hunt believed that they 'had behaved very indecently in exposing the woman, whom they had found drunk in the streets'--and it is unclear to what extent the assault was sexual--he felt that the men should be punished lightly and merely as an example to drunkards: 'Radical Reformers' 35 (25 May 1822):10.

had personal experience at the gaol where the magistrates prohibited him 'even the sight of a female' and then instigated a turnkey to offer him, 'as it were by stealth', the key to the female ward. For Hunt and his supporters, there was no virtue among the powerful and their sexual hypocrisy was of a piece with their political depravity.<sup>142</sup>

The failure to adhere to a proper system of classification within the prison led to all sorts of 'indecentcies', but Hunt was most concerned with the plight of debtors (who, like Hunt, were not members of the criminal classes) and with the presence of men guilty of unnatural crimes in the general prison population.<sup>143</sup> Female debtors were housed with 'streetwalkers and shop-lifters from Bath' and were accessible to male staff and prisoners.<sup>144</sup> Lack of facilities for private meetings forced debtors to '"take their wives to the necessary house for

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<sup>142</sup>Ibid., 13(25 March 1821):8; see also 6 (21 October 1820):7, where Hunt denounces the 'canting hypocrisy' of the authorities who refuse to admit his common-law wife.

<sup>143</sup>The Ilchester debtors were commemorated in the eighteenth century by a halfpenny token that said 'Remember the Debtors in Ilchester Gaol' on one side and carried the name of the reformer, John Howard, on the other: N&O for S&D 24 (1946):305.

<sup>144</sup>Henry Hunt, A Peep Into a Prison: Or, the Inside of Ilchester Bastile. 1821. Ilchester and District Occasional Papers, No. 11 (Guernsey: Toucan Press, 1979), pp.19;20;23;28.

the purpose of connection".<sup>145</sup> Prisoners, usually segregated by sex, indulged themselves when they met each Sunday at divine service; young boys associated with felons and slept with buggerers.<sup>146</sup> In 1815 the magistrates had ordered that boy prisoners should not be allowed to sleep with the men, but on Hunt's arrival he discovered that not only was this rule ignored, the gaoler made boys 'sleep with a man convicted of beastiality'.<sup>147</sup>

The intolerance of prisoners for men accused of unnatural crimes is well-documented and Hunt seems to have done his best to fuel that intolerance.<sup>148</sup> Fielding describes the perils run by such prisoners in Amelia:

Blear-eyed Moll and several of her companions, having got possession of a man who was committed for certain odious unmanlike practices, not fit to be named, were

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<sup>145</sup>Henry Hunt, Esq., Investigation at Ilchester Gaol in the County of Somerset into the Conduct of William Bridle, the Gaoler, Before the Commissioners Appointed by the Crown (London: Thomas Dolby, 1821), pp.52-3. Hunt was horrified by the lack of humanity with which debtors were treated, and extended his concern to the denial of the sexual needs of the men and their wives and their right 'to have that connection together, which God and nature had designed': p.73. A debtor at the inquiry testified that semi-public intercourse in the privy and the conversation room were '"so common that men admit the fact and joke about it amongst themselves"'.

<sup>146</sup>Hunt, Peep Into a Prison, p.19, and Investigation, pp.1-3.

<sup>147</sup>Hunt, Investigation, pp.3;1.

<sup>148</sup>Gilbert, 'Sexual Deviance and Disaster', pp. 105-9.

giving him various kinds of discipline, and would probably have put an end to him had he not been rescued out of their hands by authority.<sup>149</sup>

While the two men charged with unnatural crimes who were at Ilchester gaol during Hunt's tenure seem to have been better integrated into the prison population, they, and particularly the man convicted of attempted bestiality, exercised a peculiar fascination over Hunt. Their activities, their deportment and their relations with other prisoners all became subjects of official inquiry at his instigation. George Stillman was sentenced at the summer Assizes in 1820 to twelve months in Ilchester gaol for attempted bestiality with a mare. Like most other men accused of that crime in Somerset, he was a labourer from a small village.<sup>150</sup> John Dredge, a labourer of Frome, had been indicted at Quarter Sessions in 1820 for assaulting Daniel Snelgrove with the intent to commit sodomy.<sup>151</sup> Though there is no record of his conviction, he was, according to a prisoner who testified at the inquiry, sentenced to two years 'for an unnatural crime'.<sup>152</sup>

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<sup>149</sup>Fielding, Amelia, 1:17.

<sup>150</sup>ASSI 23/10 (Summer, 1820); 25/16/10.

<sup>151</sup>Q/SI 440 (Easter, 1820).

<sup>152</sup>Hunt, Investigation, p.70.

Yet even Hunt's questions at the inquiries did not elicit a uniformly negative response to these prisoners. James Marsh, a fellow prisoner, at first complained that men had to sleep with Dredge; he eventually admitted that Dredge had his own bed in a shared cell. When asked whether he had heard of Stillman 'behaving improper to anyone?' he replied, 'Yes; I have heard James Johnson say that Stillman behaved very indecent'. However, when Matthew Hobbs, a former taskmaster, was asked whether Stillman was 'for his crime, a notorious character in the gaol?' he answered 'He was; but he is a civil, well-behaved man'.<sup>153</sup>

The infection Hunt was describing spread beyond the prisoners to the governor, who failed to provide an example of a 'well regulated private family', and to his staff, many of whom were related to him by blood and marriage.<sup>154</sup> The practise of obscuring the origins of bastards was taken to gothic lengths within the confines of Ilchester gaol, where female prisoners who were moved into the governor's quarters as servants could be ex-

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<sup>153</sup>Ibid., pp.70;12-13;15.

<sup>154</sup>A great deal of the inquiry was devoted to exposing William Bridle's brutality; he was notorious for torturing prisoners. Powys, 'Ilchester Gaol', p.84, contends that Bridle's 'experiences in the hulks'--where he had previously supervised prisoners--'seem to have given him a taste for such prison instruments' as stocks and manacles.

pected to become pregnant. According to the matron, one such woman swore her bastard to William Bridle, the governor, though the real father was his brother George, the turnkey.<sup>155</sup> Sarah Hewitt, another prisoner and William Bridle's cook, claimed in a petition, written no doubt by Henry Hunt, that Bridle 'took advantage of the power he possessed, and by alternative promises and threats, he, at length, induced [her] to give up her person to his embraces: the fruit of this intercourse was a female child, born about two years back, which child has remained in the prison with [her] ever since'. Bridle contrived to keep Hewitt, who had always conducted herself with 'strict propriety', from the magistrates and threatened her nurse, another felon, with transportation if she should reveal his secret. Hewitt asked pardon and begged to affiliate her child.<sup>156</sup> At the time of the inquiry, an Ilchester apothecary was suing a turnkey at Assizes for the amount of his bill. He had cured the turnkey's wife of venereal disease and a serious salivation caused by her husband's private administration of mercury.<sup>157</sup>

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<sup>155</sup>Hunt, Peep Into a Prison, p.28 and Investigation, pp.1;4-6.

<sup>156</sup>Hunt, Memoirs, 2:17-9.

<sup>157</sup>Hunt, Peep Into a Prison, pp.25;28.

Hunt was not the first to subject the sexual economy of the Bridle household to public scrutiny. In 1815, William Bridle had brought a libel suit at Assizes against another former taskmaster, Daniel Lake. Lake's libel, which is concerned solely with sexual immorality, describes the behaviour not of William Bridle (which Hunt was happy enough to do six years later) but of his wife Maria, who lived with him in the gaol, and of her friend Jane Culliford, who often visited there.<sup>158</sup> Culliford, the daughter of the butcher who had a lucrative arrangement for supplying meat to the prisoners, later married the gaoler's brother, George, the purported father of a bastard.<sup>159</sup>

Hunt pilloried William Bidle for a number of offences, from torturing prisoners to holding dances in the gaol at election time, demolishing the structure of the keeper's reputation brick by brick. He attributed a sexual dimension to many of the crimes, or described them

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<sup>158</sup>ASSI 25/14/22. For the full text of the libel, which was said to damage the reputations of William Bridle, Maria Bridle and Jane Culliford, and which was published on 10 February 1815, see Appendix I. A true bill was found.

<sup>159</sup>We learn from Hunt that Bridle had staffed the gaol with his relations, though it is not certain that Lake, a yeoman, was a kinsman. For the Cullifords, see Hunt, Investigation, pp.32;45. The Investigation and 'Radical Reformers' 14(11 April 1821):11-13, identify Bridle's brother George as a turnkey, his sister as a housekeeper, a former taskmaster and his wife related to Mrs. Bridle, and a niece working in the gaol.

with an eye to obscenity, but the sexual misbehaviour he taxed Bridle with was never simple adultery. Failing to provide for bastards or the sexual exploitation of female dependants (in this case prisoners) could be counted on to excite popular ire; male adultery, without reference to a partner, could not.

Lake, however, had a far simpler task. By choosing a woman as the subject of his libel, Lake had only to impugn her chastity, which he did, commencing with 'I...do not think there is a more depraved Character in this gaol...than Mrs. Bridle...is and from Mrs. Bridle's conduct verry few Women but what is worse when discharged from the Gaol...then when admitted'. Lake went on to picture Mrs. Bridle as a voracious adulteress, seducing all the men who crossed her path, sometimes with the assistance of Jane Culliford. A married man, Lake claimed to have succumbed to their importunings which he described in detail concluding, 'It is almost impossible for any Man Young in Years to withstand Mrs. Bridle's temptations...and if the Person that might fill that situation would not act according to her Lewd wishes she would get them out by insinuating with Mr. Bridle... against them'.

There was, of course, an element of exploitation in Maria Bridle's adulterous activity. However, her power, which derived solely from her husband's position,



may have been terminated as a result of Lake's revelations. Hunt called several witnesses who testified that Mrs. Bridle continued to misbehave in her husband's absence, but he indicates that Bridle later used the charges brought by Lake against his wife, perhaps in divorce proceedings.<sup>160</sup>

Lake's libel forms an interesting complement to the inquiry published by Hunt six years later. Though on different sides of the prison gate, both men described corruption that emanated from the gaoler's house, polluting the entire gaol. That Lake could do this by libelling his employer's wife, and that Hunt instead deployed the full legal apparatus of an inquiry, may be explained by their positions relative to the lock; but the choice of instruments once again brings into sharp focus the difference between male and female reputation and the ways in which each could be attacked. A woman's honour, exclusively linked as it was to her sexual behaviour, could be easily challenged. If she were married to a private man, or a poor one, a woman might bring her cause to Wells Court, where she could mend her reputation and erase the charge of cuckoldry with or without the assistance of her husband. If, like Maria Bridle, she were married to the keeper of the Ilchester

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<sup>160</sup>Hunt, *Investigation*, p.40 and 'Radical Reformers' 14(11 April 1821):11; 39(23 July 1822):2-4.

gaol, it would be he who exerted all his influence to remove the stain that extended to his own reputation.

The differences between Lake's and Hunt's projects, however, extend beyond gender. For Hunt, Ilchester gaol was a microcosm of the society he lived in, and the cruelty and oppression, the hypocrisy and depravity he uncovered within its walls accurately reflected the larger world of Old Corruption he abominated. If Lake chose to make his libel a sexual one, it was because it was the simplest way to dishonour Maria Bridle and therefore to attack her husband: little more than an efficient form of personal revenge. Hunt's choice, to make his sweeping political statement in terms that were frequently sexual, reveals instead the extent to which the sexual and the political remained inseparable in the language and culture of popular politics in the early nineteenth century.

There are two themes that emerge from our discussion of male honour. The first is that male reputation was defined only marginally in terms of sexual behaviour, whereas female reputation was virtually synonymous with chastity. This explains why the church courts, with their jurisdiction over sexual matters, remained the most popular forum for the defence of the honour of plebeian women in our period and why, as the

adoption of the double standard led to a further desexualisation of male reputation, men ceased to bring causes at Wells.

Secondly, the relation between changes in concepts of sexual honour and in the larger sexual economy may be seen more clearly for men than for women in our period. New definitions of male honour arose alongside increasingly rigid and divergent definitions of masculinity and femininity in the century following 1750; as gender roles hardened, male sexual honour became increasingly focussed on the issue of passivity. While the lecher or the adulterer had been condemned for their sexual acts, the cuckold and the sodomite were excoriated for abandoning the masculine role. The widespread adoption of the double standard and of new definitions of gender roles and the changing perceptions of buggery that we have outlined above are symptoms of a merger of the popular and polite sexual cultures that was occurring throughout this period and which culminated in what we know as Victorianism.

We can hear the new sexual economy speaking very clearly in the writings of Henry Hunt, just as we can hear the bywords of the obscene populism of the 1820s. Hunt the individual subscribed unbendingly to a sharp differentiation between male and female roles. He called upon prison authorities to impose a classification system

that would separate not only different types of criminals, but men and women and the virtuous and the nonvirtuous. Hunt was emphatic about the sexual nature of female virtue, and he was equally zealous in identifying buggerers as men who were not men. Though the appeal of Hunt's tirades against unnatural acts may have resided in a traditional abhorrence of buggery, and the sexualised polemics he dispensed caught the tone and feeling of an older plebeian culture, both sexual and political, his personal detestation of sodomy and bestiality was a result of their violation of his perception of the masculine. Ilchester gaol was finally demolished in 1843, the site bought by the Tuson family, whose proctors and attornies we have already met, and converted into gardens. Shepton Mallet gaol, which already provided separate facilities for male and female prisoners, was enlarged to take its place.<sup>161</sup> Of the ideas that informed Hunt's writings, it was the definitions of gender roles and of sexual honour, rather than the obscene populism, that persisted beyond mid-century and which were alive and well in the 1880s when Trollope wrote the words quoted at the head of this chapter.

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<sup>161</sup>YCH, 3:185-86 and Farbrother, Shepton Mallet, p.111.

## CHAPTER 10

## CONCLUSION

Loss of reputation, which is generally irreparable, was to be her lot; loss of friends is of this the certain consequence; all on this side of the grave appeared dreary and comfortless; and endless misery on the other, closed the prospect. (Henry Fielding, Amelia, 2 vols., London and New York, 1930 (written 1751), 2:68.]

Fielding was writing of a landlady whose exposure as a pimp was to bring upon her this terrible fate. That the lord whom Mrs. Ellison served was allowed to continue on his merry libertine way reminds us that though Amelia is set in London, the story is firmly placed in the world of double standards--double standards of gender and class--where the sexual activities of men and women, and of a Mrs. Ellison and an unnamed lord, have different consequences. The world we have been describing was a more homogeneously plebeian one and had not always been rigidly subject to the sexual double standard, but nonetheless the briefest examination of the language and circumstances of defamation and of the participants in defamation litigation reveals that women of the lower orders, women of Mrs. Ellison's rank or below, bore characters very differently constituted from those of their men.

This sexual division of reputation extended to law and language in the eighteenth and nineteenth centuries. It meant that women defended their reputations in the spiritual courts and men defended theirs in the temporal courts; it meant that female reputation was defined in sexual terms while male reputation took cognisance of the social, economic and political activities of men. The word 'whore' was the most potent verbal weapon one could carry into battle against a woman, but male misbehaviour could not be condemned with a single epithet. Rogue, scoundrel, bugger, whoremaster: none of these shares both the universal applicability and the explicit sexual meaning of the favourite female insult. Honesty in business and at law were the essential components of male honour as defined in the actions for libel brought at Quarter Sessions and Assizes: men were pilloried for cheating, misappropriating funds and embezzling; their pictures were chalked on walls with the word 'informer' and they were accused of selling evidence, committing perjury, or bringing vexatious suits. Attornies or medical men who violated their trust came under attack, and men who ruined those who stood sureties for them, who refused to pay their debts, who revealed secrets or in other ways revoked their word of honour were the subjects of libels.

Not only did men and woman have different reputations to protect, but their sexual reputations diverged as well and grew further apart as time went on. The few men who brought causes at Wells in the early eighteenth century had been charged with committing adultery and fathering bastards, charges not unlike those levelled at women, as well as with consorting with whores. Sexual transgressions, however, form a very small part of the content of criminal libels, and the misbehaviour that is included is intended to illustrate breach of trust and a derogation from the duties and obligations of gentlemen rather than to condemn promiscuity or libertinism. A surgeon who seduced his patient, a churchwarden who had a child by his servant and a man who satisfied his 'carnal appetite' by committing adultery with his niece were guilty of taking advantage of their dependants or violating a trust; and the politician who divided his time between his constituents and a lady was chastised for robbing his electors rather than for succumbing to vice.

The increasing imperviousness of male reputation to traditional sexual insult did not mean that men were entirely freed from the threat of dishonour. With the adoption of the double standard, the language and practise of defamation became focussed on the marital relationship, and the adultery of wives, with its

implicit comment on the sexual passivity and inability to govern of their cuckold-husbands, was the central theme that found its voice in defamation litigation. Further weak spots are revealed in the allegations of blackmailers and extortionists. Some sexual acts, such as sodomy and bestiality, were considered objectionable regardless of partner, and blackmailers were especially apt to include buggery in their repertory of allegations. Other schemes of extortion were built upon activities, such as fathering a bastard, whose consequences would be financially damaging if they were made public. *Women, on the other hand, were the subject of very few criminal libels. In the two cases we have discovered they were accused of illicit sexual activity and nothing more. They were never prosecuted for unnatural acts, and though some undoubtedly fell victim to blackmailers and extortionists, they did not make use of any court in Somerset to free themselves from their demands.*

The Act books and cause papers of the church courts of the diocese of Bath and Wells have enabled us to determine the types of men and women who participated in defamation suits as plaintiffs, defendants or witnesses, the language in which defamatory sentiments were expressed and the circumstances that led to defamation and its prosecution. The preponderance of female plaintiffs and the ubiquity of the word 'whore' confirm the



existence of a widening gulf between male and female reputation.

Defamation, most typically, was a crime committed by men against women. Of the plaintiffs who brought suit at the diocesan or archidiaconal courts between 1733 and 1850, 94% were female; after 1781 men no longer sued at Wells. More than half of these women were married, only a fifth were spinsters and fewer than 10% were widows. The majority of defendants, on the other hand, were men. Among female defamers, married women once again predominated.

The gender distribution is reflected in the intraparochial nature of defamatory incidents. Plaintiffs and defendants were drawn from the same parish in 87% of the causes, and where this was not the case, the residences of litigants were usually separated by no more than a parish. As important as the lower mobility of women, who were less likely to work far from home, was the tendency to prosecute in situations where the defamatory words were spoken by someone known to the plaintiff and in the hearing of neighbours and acquaintances. The impact of locality on prosecution was, however, modified by the size of the parish in which the defamatory incident occurred. In 1801, a third of the population of Somerset resided in parishes with fewer than 500 inhabitants, yet less than a fifth of all

defamation causes between 1733 and 1799 originated in these small villages. Instead, a disproportionate number of causes came from the eighteen most populous parishes and from the city of Bath. By 1851, the increase in the county's population had been absorbed by parishes with more than 2000 residents, which now held 45% of Somerset's inhabitants, and from which 59% of the defamation causes initiated between 1800 and 1851 came. Throughout the period, the city of Bath and the larger market towns were the most likely locations for defamatory incidents that resulted in prosecution.

Occupation and class are obscured by the paucity of the data and the fact that where male litigants were identified by occupation, female litigants were identified by marital status. In the few cases where we can assign an occupational status to women, it is generally that of their husbands or fathers. Tradesmen, craftsmen, their wives and daughters are most prominent among litigants, but they are joined by labourers and servants and by large tradesmen and a handful of professionals, yeomen and gentry. Plenary causes reveal more occupational information than do summary ones, and for this reason those who could afford lengthy suits were more consistently identified than those who settled matters for 10s. or less. Thus, if the apex of our social pyramid is accurate enough, the base--the causes involving labourers

and servants--is probably larger than the available data suggests. In a very few cases the occupations of both plaintiff and defendant are named, and in these instances the adversaries were twice as likely to be drawn from different ranks as not. That the gentry were rarely involved in defamation litigation in this period, and least of all as plaintiffs, and that parsons and professionals only came forward on a few occasions, usually when they had been defamed by their inferiors, suggests a fissure in attitudes toward reputation and its defence that separated the lower and middling classes, who made up the bulk of the church courts' defamation clientele, from the upper classes.

The decision to transform an insult into a defamatory assertion by bringing a cause in the church court did not always originate with a plebeian victim. The pressure exerted by an employer, client or customer of a higher rank could result in legal action being taken where less formal means of retaliation would have better suited the injured party. Where traces of such interference are most visible, the initial response of the plaintiff often excluded contemplation of prosecution at Wells. Because defamatory language could not be separated from the context in which it was used when litigation was under consideration, the different ways in which plaintiffs and patrons evaluated a defamatory

incident--the location and witnesses, the relation between defamer and defamed--reveal further differences between polite and popular sexual culture.

More information is forthcoming on the witnesses called in defamation suits than on the litigants. These witnesses may be divided into three categories: those deposing prior to 1800 in causes originating outside the city of Bath; provincial witnesses from the fifty years after the turn of the century; and witnesses to Bath causes in the first half of the nineteenth century. Overall, male witnesses were preferred, perhaps because of their literacy (as evinced by their ability to sign their depositions) and their lower level of long-term geographical mobility, which often meant that they had been known to the litigants who summoned them for as many as twenty or thirty years. In Bath, where the number of witnesses of each sex was almost equal, women were slightly more proficient at signing their names than men, and the level of mobility of witnesses of both sexes was much higher, as so many had been born outside the city. The popularity of spinsters as witnesses, particularly after 1800 when they outnumbered married women, may be attributed to a new emphasis on winning defamation suits which encouraged litigants to procure the most favourable --often the most dependent--witnesses. Younger witnesses were summoned for the same reason. Though a third

of each of the three groups of witnesses may be characterised as kin or dependants, the balance over time was shifting toward younger kin and needier dependants. Given a choice, litigants chose witnesses of a rank equal or inferior to their own. Consequently, witnesses are grouped at the lower end of the occupational scale, with labourers and servants more in evidence. In Bath, participants in suits mirror a distinctively urban and service-oriented economy: servants and the service trades are well represented.

The language of defamation, and especially that part of it which was not limited to the word 'whore', does much to define the boundaries of sexual tolerance that governed sexual reputation. That the men and women who gave insults or bridled at them or overheard them were almost wholly drawn from the lower orders in our period encourages us to think that these boundaries lay within a plebeian and popular culture rather than a patrician and polite one, though the two overlapped at many points. Defamatory words preserve the polarity between the chaste and the unchaste that was common to both cultures, but they allow for many shades of grey between that more accurately reflect the distinctions between the two. Defamers were able to distinguish degrees of misbehaviour by assigning names or occupations or even numbers to sexual partners; by coupling sexual

activity with venereal disease or the birth of bastards or with prostitution or spouse-stealing; and by designating localities for the crimes or invoking comparisons with such familiar neighbourhoods of disrepute as Portsmouth or Avon Street in Bath. Familiarity--with personalities, with places, with rank and relation--was essential to a proper understanding of insult and it is this reliance on local knowledge that renders so much defamatory language impenetrable to the outsider, whether she be from the other side of the Hundred or, like the historian, from another century altogether. For the conjunctions described in defamatory discourse were meant to be exemplary as well as to convey personal disapproval for specific couplings. The misalliances created by or commented upon by defamers, in showing women compounding their sin by, for instance, reaching above or below themselves for sexual partners, were among the signposts that might guide the social interaction of the non-sinning. The libels published against men were part of a written rather than an oral tradition, and their prescriptions are not mediated by metaphor in this way. (The single written libel found among the cause papers in Somerset is as allusive and metaphorical and, indeed, as obscure as its oral counterparts). They rely on such rhetorical devices as exaggeration or the adoption of recognisable literary forms--the criminal's final

confession, complete with picture, employed by Anthony Thomas's libeller being a prime example--and are far easier to decipher than the succinct speeches of defamers.

Undoubtedly the law and its institutions shaped the picture of plebeian sexual culture that is conveyed by defamatory language. Plaintiffs willing and able to conform to the strictures of the law could prosecute their defamers and receive satisfaction for extensive insult, as the depositions show, under the guise of being called whores. Even men who had been called cuckolds could persuade proctors at Wells to bring suit as if their wives had been called whores. But where words were not actionable in the church courts--as in insults involving sodomy or bestiality--or where registrars rejected them as the basis of the suit or judges exercised their discretion to rule them inactionable--as in the case of male heterosexual insult in the latter part of the eighteenth century--segments of the picture fall away. Descriptions of disputes and assaults confirm that some words with sexual connotations, such as 'rogue', did not lose their potency when they were no longer actionable, and others, such as 'bugger', were used indiscriminately as terms of abuse without any sexual inflection. Indeed, once men ceased to litigate as plaintiffs at Wells, women had greater latitude in the terms of opprobrium they

could safely apply to their defamers: Mary Hollister called John Gould an 'old grey headed Rogue'; Sarah Weeks called Joseph Bissecks a 'whoremongering Rogue'; and Mary Whittle called James West the younger a rogue.<sup>1</sup> Our field of vision is further reduced by the gender and marital status of the courts' clientele. The effects of the exclusion of male plaintiffs have already been noted. Unmarried women brought few causes at Wells and when they did the problems they faced defending their reputations reflected an uncertainty, in our period, as to what constituted legitimate premarital sexual activity. Yet we are not entirely indebted to the law for the nearly exclusive illumination of the reputation of married women that defamation litigation offers, for the concern with conjugality was central to plebeian sexual culture.

Differences in the circumstances under which defamation occurred are more apparent between town and country than over time. Tongues loosened by alcohol did their damage in pubs and at fairs and revels and club days, whether inside the city or out. More distinctively rural are disputes over land or agricultural animals and confrontations with parochial officers. The public

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<sup>1</sup>Hollister and Hollister v. Gould, D/D/C (1767); Weeks v. Bissecks, D/D/C (1794-1815)[1805]; Whittle v. West, D/D/C (1831).



slanging match between neighbours was not restricted to Bath, but in the city the street was more likely to be busy, a policeman might be lurking nearby and the victims were all women unaccompanied by men. In Bath, the shop, the market and the crowded lodging house formed the backdrop to many defamation suits. Some defamation took place within doors, and was usually gossip or rumour-mongering that reached the wrong ears or led to unexpected legal retaliation.

The relation between defamer and defamed was frequently more significant than the setting of an incident. The bailiff, the overseer of the poor, the minister or the churchwarden might find that his official duties had landed him in court, charged with defamation or libel, or accusing others of these crimes. The friction between master and servant, pubwife and customer, landlady and tenant or trustee and heir found expression in defamation. In Bath, the conflicts that arose between neighbours in lodging houses or between tradespeople in the city's commercial precincts were aggravated by crowding and competition for scarce resources, whether customers or cooking facilities.

The most common relation between defamer and defamed was that between a man and a woman, and it is the power relations between men and women reflected in defamatory encounters that we have chosen to explore in some

depth. Women who had to exercise authority, particularly in their working lives, were vulnerable to insult, and given the prevailing definition of female reputation, the congruence between 'whore' and 'ungovernable' and, ultimately, 'unfeminine', it is not surprising that these insults should have taken a sexual shape. Where that authority was exercised over men, as in pubs, where publicans' wives, female publicans and servants had to keep order among male customers, where female pedlars were expected to be convivial but not provocative, and where women intent on fetching their men home may have ventured at their peril, the danger was increased. The need to assert her authority coupled with the need to defend the reputation of her business, so closely linked with her own sexual reputation, made the female publican a frequent visitor to the ecclesiastical courts. Landladies, who ruled over men and women, and shopkeepers and market women could be injured along with their livelihoods. Women who mediated or intervened in disputes between men or took upon themselves tasks and roles associated with men--as when Sarah Andrews impounded James Pobjay's straying sheep--could also expect abuse.

Miranda Chaytor, in her study of household and kinship in a Durham village in the late sixteenth and early seventeenth centuries states: 'That women and men

should have had different reputations to defend is hardly surprising when their lives diverged so radically'.<sup>2</sup>

In the eighteenth and nineteenth centuries, in Somerset, those reputations had strayed even further apart and were no longer defended in the same courts. Yet the evidence of defamation causes reveals a world in which it was the women whose lives most closely approximated those of their men, and were furthest from the purely domestic role Chaytor ascribes to her women, who were to be found in court, defending their reputations. Depositions describe the unease generated by the disparity between the sexual division of labour and the sexual division of power: the fact that women who took on what was increasingly defined as men's work could not take on their power unchallenged. The language of defamation was a tool for disciplining women, for returning them to their proper place by reducing them to the lowest denomination of womanhood, the whore, and it is not fortuitous that it was its use by men that most commonly led to litigation. To the extent that marriage was still of considerable importance to the survival of individual women, and a reputation for chastity was a prerequisite for many marriages--and sexual fidelity within marriage insured its continuance--the language of defamation was

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<sup>2</sup>Chaytor, 'Household and Kinship', p.26.

unambiguous. But for scores of married women who were called whores the word was a metaphor, and an explicit metaphor for the loss of femininity that accompanied women's exercising authority over men. If marriage presented a woman with more opportunities to exercise such authority, particularly in sharing her husband's livelihood, it saddled her with an additional liability in maintaining her reputation, for any sexual insult to her was bound to reflect on her spouse.

Women did not have different, sexual reputations to defend because sexual insults most aptly reflected on a predominantly domestic role, but because it was their sexuality, their procreativity and their relation to men that increasingly gave them value in a world that was willing enough to employ them as landladies and publicans and washerwomen and shopkeepers and servants. It was this disjunction between the new, domesticated feminine ideal and the actuality of the material roles of men and women in this era of economic dislocation that led to the conflict, expressed in defamation, between female sexuality--which in the language of defamation was invariably illicit and disruptive--and femininity. Male sexuality, where it had a bearing on reputation, was bound up with masculinity in such a way that only deviations from heterosexuality--the passivity of the

cuckold or the sodomite--could be used as sexual insults. Defamation proceedings, in the eighteenth and nineteenth centuries, tell us far more about the contested areas than about the separate spheres of men and women, more about the conflicts over power than the sexual division of labour. Gender divisions, rooted deep enough to have shaped the vocabulary of insult, made it possible for these battles to be fought, not only in physical or material terms, but also in the metaphorical language of sexuality.

The regulation of reputation was not confined to the law and its institutions. The women who took their causes to the ecclesiastical courts were generally married women, and the men who prosecuted libellers at Quarter Sessions or Assizes were public men. Physical and verbal violence, gossip, popular rituals and popular tribunals also contributed to the control of sexuality and the maintenance of reputation: the young, the unmarried and the widowed may have been more subject to these constraints than to litigation. The defence of male honour was commonly associated with violence and in Somerset men were burnt in effigy more frequently than were women. Some physical violence straddled the border between assault and acceptable ritual humiliation, as when Mary Ellis, a spinster, was pushed into a deep pond

and had her hair cut off.<sup>3</sup> (The incident sounds like a ducking, if an unofficial one, and the haircut may have been another ritual act, intended to provide Ellis with an outward sign of her loss of femininity, but Ellis's tormentors were fined only a shilling apiece, which suggests that their assault was tolerated.) The literate classes were able to express their intolerance for certain kinds of sexual behaviour without recourse to insult, or blackmail or charivari. The sermon or the Sunday school lesson, in the hands of Hannah More or her minions, might rapidly acquaint listeners with her ideas of the reputable and the disreputable. Henry Hunt, incarcerated in Ilchester gaol, poured out his thoughts and prejudices in his Memoirs and in a fortnightly letter to his supporters. While he condemned seduction, had occasional harsh words for rapists and relished accounts of the sexual sins of clergymen, he was most appalled at having to share his confinement with men who committed unnatural crimes and he made sure that his readers knew it.

Nonetheless, there was an awareness of the litigious possibilities of words and the flexibility of instance litigation in the ecclesiastical courts that enabled plebeian disputants to create circumstances in which it

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<sup>3</sup>ASSI 23/9 (Lent, 1800); 24/43 (Summer, 1799): process book.

would be necessary to settle their differences at Wells. This awareness gave rise to at least two paradoxes. First, language could be, and was, manipulated so as to provoke suits that were intended to harass an adversary rather than to restore a good fame; litigation was certainly used to aggravate or terminate hostilities quite unrelated to reputation. And secondly, for the majority of litigants the church courts offered a service that could be incorporated into the regulatory mechanisms of a plebeian sexual culture whose values were often at odds with those of the dominant sexual culture.

What the church courts offered that may have been particularly attractive to plebeian litigants were a cheap mode of settling disputes independent of winning or losing: accessibility for married women; and an appreciation of conjugal reputation, a willingness to recognise that insult to a married woman meant injury to her spouse as well. The emphasis on arbitration, reconciliation and restoration, derived from Christian doctrine and embodied in canon law, was important to those for whom the communal dimension of reputation was paramount. If verbal insult could jeopardise a good reputation, and if a good fame was essential to determining one's standing in the community, then both the erasure of the insult and the resumption of friendly relations between warring parties had to be made public. The church courts were also one of the few

institutions of Georgian and Victorian England to accord married women a modicum of independence. The Christian recognition of the individuality of reputation which resulted in the married woman's right to bring suit without her husband's consent, and the fact that most defamation suits, into the nineteenth century, could be settled for 10s. or less, which must have frequently obviated the need for a husband's assistance, meant that married women could defend their reputations without reference to their mates. At the same time that the courts offered institutional support for the independence of married women, they fostered conjugality by accepting that the charge of adultery levelled at a married woman was implicitly accompanied by an insult to her husband. The accusation of cuckoldry had never been actionable in the church courts, but men did not therefore feel the injury less (having adopted the double standard, they may have felt it more), and they continued to send their wives to court when they were called whores, signing their proxies and paying their costs, in order to erase this doubled-edged insult. The willingness of court personnel to cater to this aspect of marital reputation waxed and waned for reasons that remain obscure. Men who were called cuckolds to their faces often found a sympathetic hearing at Wells, where the actual words spoken to the husband were replaced by the implied insult to the wife in libels; and for a period in the second half of the



eighteenth century all married female plaintiffs were designated along with their husbands in Act books and on court papers, giving the appearance, at the very least, of the husband's acquiescence in the wife's suit. The church courts, as long as they adhered to these policies and procedures, were peculiarly fitted to the needs of the plebs.

The continuation of the defamation business of the Somerset church courts up to the point where their jurisdiction was abolished owed much to the litigants who refused to abandon the courts and to the administrative caste that lived off them. This institutional loyalty, however, did not stop judges, proctors and registrars from originating changes in style and practise that were in part responsible for the long-term decline in business. Local changes and those imposed by statute contributed to disaffection: higher costs and more frequent imprisonment attracted litigants intent on winning a suit or punishing an opponent while they frustrated the cheap and rapid termination of disputes. At church court litigation came to resemble litigation at common law, those who sought reconciliation through arbitration, formal or otherwise, in the interstices of ecclesiastical procedure, or through public penance, were increasingly disappointed.

In other respects the courts and the law acted as agents of social change, and particularly as purveyors of different sexual and social values. Nowhere is this more

apparent than in the imposition of the double standard on plebeian litigants who, in the matter of sexual reputation, continued to adhere to traditional Christian egalitarianism long after it had been abandoned by the upper classes. The double standard, which was repudiated Christian doctrine and should have found no outlet in the proceedings of the ecclesiastical courts, was introduced in the case of reputation in the usual way through alterations in jurisdiction and in local practise. Nor were these alterations consistent, or consistently disapproved, for as we have seen, while married women acting alone could find succour at Wells, neither they nor the personnel of the courts ignored the conjugal aspect of female reputation. The narrowing of jurisdiction to sexual insult, at a time when the differential access of women to the spiritual and temporal courts was so pronounced, encouraged women to defend their sexual reputations while leaving a broader choice for men. In the latter half of the eighteenth century, the exclusion of causes brought by men was imposed on a plebeian clientele who were urged to abandon a definition of male reputation that no longer had a place in the practise of law and legal institutions.

Closely linked to the double standard were ideals of respectability and decorum, evoked with such vehemence by the witnesses to the parliamentary commission, that found public penance and the exposure of women that it entailed

distasteful. This was enough to eliminate all defamation litigation in many dioceses, but in Somerset, where it continued, penance was moved from the chancel, to the vestry, to the minister's house and finally to the courtroom itself in Wells Cathedral, far from the scene of damage. The wording of these apologies followed the traditional form, and if they were not absolutely private (presumably those involved in a cause might be joined by interested parties or even passersby they eliminated the element of local publicity that was essential to restoring communal harmony. After 1837, none of the decrees of the ecclesiastical courts were read out in church, making defamation litigation a private matter. That defamation litigation did continue to put things right between individuals, and between individuals who, in turning to the law, may have had few choices as to venue, may have accounted for the trickle of litigants who used the courts, sadly diminished in their proper powers, right to the end.

In practise, defamation proceedings had come, in the eighteenth and nineteenth centuries, to involve a conjunction of gender, class and subject--sexuality--that must have forced court personnel to reconsider any mercenary interest they had taken in them. From the late eighteenth century, defamation causes, more than any other business the courts considered, brought together a clientele and a professional caste whose differences in class, in gender

and in values were made uncomfortably visible by the work at hand. To have a woman of the lower orders stand by as her defamer repeated his insults in his apology--on those occasions when plaintiffs attended at Wells--must have been a sore trial to the men, clerics and educated professionals, all of whom had won the right to style themselves gentlemen, who administered the courts in the nineteenth century.

The willingness of men and women to bring their damaged reputations to Wells Court, and to comply with its decrees, outlasted the welcome offered to them there. Yet the redefinition of reputation and its defence cannot be laid entirely at the door of the church courts. The years under consideration were years of rapid social and economic change, change to which the men and women of Somerset were not immune. The Somerset branches of the West Country textile industry were declining in the eighteenth century. Employment opportunities for women initially declined as spinning was mechanised, other traditional by-employments failed and women withdrew from farming and marketing agricultural produce. Later, new opportunities arose--in the large factories in the environs of Bath, in agricultural day labour and glovemaking--but brought women into competition with men. Though much of the county's pasture had been enclosed at an earlier date, the late eighteenth and early nineteenth centuries witnessed the enclosure of

arable land and commons, especially in the east. Demographic change alone altered the size and distribution of population in ways which had an impact on social relations. A growing population, gravitating towards the larger villages and towns, altered the length and significance of neighbourly bonds. Wage work, once concentrated in Bath and the great cloth towns, became more widespread and changed work and hiring practises, requiring a new and narrower knowledge of character that took into account the fact that masters and workers were often unknown to each other.

The monolithic Christian view of reputation which the courts were originally designed to defend became unenforceable as reputation was broken down into its components and its value and definition subjected to intense negotiation. Where once public and private reputation--what people heard of each other and what they knew from living and working in close proximity--were inseparable and had equal bearing on one's standing in a community, a fracture was becoming increasingly apparent between the way the two were apprehended, evaluated and verified. Judgements about character might be offered after far shorter periods of acquaintance and they might reflect the segmentation of people's lives into work and leisure and the new ways in which people defined neighbourhood or community. As a forest of mitigating circumstances grew up around sexual

lapses, such as the bearing of a bastard, it became more commonplace to consider sexuality as one of many aspects of character. This is not to say that individual women were treated more liberally or that their sins were routinely overlooked; the discovery of illicit sexual relations continued to blight female prospects. Yet this ability to see reputation as a complex matter was in itself evidence of changing attitudes. A good reputation, and for women a good sexual reputation, was no less necessary in nineteenth-century Bath than it had been in the small Somerset villages at the start of the eighteenth century, but as these adjustments show, the way in which reputation was defined--its impact on and relation to work and leisure and family--and the way it was maintained and defended, had changed.

By 1854, when the church courts closed their doors to defamation litigants, most of their clients--the wives and daughters of artisans and tradesmen who had remained loyal throughout the courts' long period of decline--had already fallen away. Just as their men had come to accept that they did not have sexual reputations that required defence at Wells, these women had learned that a good fame, which kept one afloat in the community and which had to be publicly defended and restored, might be replaced by an array of characters suited to circumstances, to the need for employment or charity, and that disputes over reputa-

tion were best carried on with a minimum of publicity. The construction of the Victorian sexual consensus required significant changes in the material conditions of life for most English people and the dissemination of religious values that had been on the wane in the eighteenth century. But it also required the dismantling, from within and without, of plebeian sexual culture and a devaluation of its rituals, customs and codes. It was inevitable, under these circumstances, that local church courts would succumb to pressures emanating from Lambeth and Westminster and would lose their grip on litigation over reputation; and that the Mrs. Ellisons of Victorian Bath would be destined to suffer their humiliation eternally, as she did, without hope of redress or the benefit of a court's decrees.

## Appendix I

## The Libel of Maria Bridle, 1915

"I...do not think there is a more depraved Character in the gaol...than Mrs Bridle...is and from Mrs Bridle's conduct verry few Women but what is worse when discharged from the Gaol...then when admitted Mrs Bridle's discourse ...and actions far surpassed any I...ever saw or heard before I...enter'd the gaol...altho I...must condemn myself...I...will endeavour to mention a little of Mrs Bridle and Miss Culliford's conduct...as correct as my recollection...will allow About May 1812 Mrs Lake...went to Exeter for a few days Mr Bridle was absent one of the nights and I...was at the House Mrs Bridle gave me some Grog Mrs Bridle went to Bedd and Miss Culliford was going and I...was invited to Bed with them...I...did not go but when I...went to my own Bed I...found a Bundle tyed up and put into my Bed I...believe it was the next morning I... was in the front yard Hilliar (meaning Elizabeth Hilliar) being at Mrs Bridle's bed-room window beckoned to me...to come up I...went up and Mrs Bridle and Miss Culliford was in Bed and invited me to come in Hilliar ...left the Room I...did not go into Bed...I...threw myself on the Bed and afterwds Mrs Bridle...told me...that Hilliar...should remark that I...had dirted the Courterpane with my Shoes It must be at July sessions 1812 that J. Acland Esq was at the Gaol...the night before the Meeting in the Parlour with Mr Bridle I...being in the Office Mrs Bridle being up Stairs sent a Note to me...to come up and I...should find her Mrs Bridle in the room No 7 the note was brought by the servant Martha Brenham I... believe she lives now at the Rev. Mr. Pynes Pudney near Somerton Mrs Lake...can tell--Another Evenening Mr Bridle being from \_\_\_\_\_ I...was at the House Mrs Lake...at her own [at] Bed time I...was invited Several times to go to bed by Mrs Bridle and Miss Culliford and went accordingly and we slept until daylight and Mrs Lake...had been round the Gaol to look for me...at another evening when we slept in Mr Bridle's house...Mrs Lake went to bed afterwards Mrs Bridle and Miss Culliford I...do not recollect whether I...was invited at this time or not however I...went up Stairs and went in Mrs Bridle's room to Bed Sometime after Mrs Lake thinging I...stopt up late search every room in the house except Mrs Bridle's room...We heard her shut the Servants Door--she went to her room and then I...went down Stairs Mrs Lake...must have heard them call me several times, as she have been passing thro' the Passage and they being up Stairs they Both used to tell the Women that Mrs Lake...was jealous of them (not



without cause)--One morning Mr Bridle being from home a young man by name Geo. Slade came in and went into Mrs Bridle's bed room they [Mrs Bridle and Miss Culliford] being in Bed--and Mrs Bridle told me...afterwards that Slade...jumpd into the Bed and she...got over the side and while she...was putting on her cloaths Slade...was connected with Miss Cullifer...It is almost imposable for any Man Young in Years to withstand Mrs Bridle's temptations...and if the Person that might fill that situation would not act according to her Lewd wishes she would get them out by insinuating with Mr Bridle... against them".

## ABBREVIATIONS

<u>DNB</u>	<u>Dictionary of National Biography</u>
<u>J. Homosex.</u>	<u>Journal of Homosexuality</u>
<u>N&amp;O for S&amp;D</u>	<u>Notes and Queries for Somerset and Dorset</u>
<u>PP</u>	<u>Parliamentary Papers</u>
<u>VCH</u>	<u>The Victoria History of the Counties of England: Somerset</u>

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415-40, 441-44, 451-55

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## Loose Acts

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D/D/Ca 397 (1783-1788)

D/D/Ca 479 (1808-1812)

Note: Act books for 1733, 1734, 1735, 1748, 1749, 1812 and 1851 are incomplete; they are missing for 1813-1821.

Papers in Causes (1741-1851): D/D/C 1741,  
1742, 1747, 1754, 1756-1761, (1761-  
1765), 1762-1763, (1765-1769), 1767,  
1772, 1774, 1776, 1778, 1780-1786,  
1788, 1790, (1794-1815), 1810-1843,  
1849, 1851

Note: These include causes from the archdeacon's court. Dates in parentheses represent bundles of miscellaneous causes from those years.

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PB3

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466-74, 477-9, 482

Draft Act Books (1731-1739): D/D/Ca 384

Note: Act books for 1733, 1743, 1748, 1749, 1751(?), 1758, 1760, 1767, 1768, 1779, 1789, 1826, 1827, 1834, 1835 and 1854 are incomplete; they are missing for 1739-1742, 1746-1747, 1777-1778, 1809 and 1812-1821.

Depositions (1738-1744): D/D/Cd 134

c. Peculiar Jurisdictions

Subdean of Wells: D/D/P bc.-sd. box 5

Precentor of Wells, Pilton: D/D/P  
pr.-ch. box 6

Dean of Wells: D/D/Pd boxes 2, 5 (This  
includes Visitation Articles and  
presentments).

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30-69

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Chew Magna:

Bastardy: D/P/che.m. 13/5/1-5

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 25/2/7,11,15,19,23,24,25,26  
 25/3/11,14  
 25/5/2,8,14,17,19,20  
 25/6/4,7,11,14,15,16,17,18  
 25/7/4,10,16,19,20  
 25/8/4,10,13,14,15,16,17  
 25/9/4,10,16,19,20,21  
 25/10/4,10,13,14  
 25/11/4,10,16,19,20,21  
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